

SPEC. COM. REP. NO.

1-22

Honolulu, Hawaii

JAN 29 , 2022

RE: H.R. No. 164

Honorable Scott K. Saiki  
Speaker, House of Representatives  
Thirty-First State Legislature  
Regular Session of 2022  
State of Hawaii

Sir:

Your House Investigative Committee established under H.R. No. 164 entitled:

"HOUSE RESOLUTION ESTABLISHING AN INVESTIGATING COMMITTEE TO FOLLOW UP ON THE AUDITS OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES' SPECIAL LAND AND DEVELOPMENT FUND, REPORT NO. 19-12, AND AGRIBUSINESS DEVELOPMENT CORPORATION, REPORT NO. 21-01; TO EXAMINE THE RECOMMENDATIONS MADE IN THOSE AUDITS; AND FOR PURPOSES OF IMPROVING THE OPERATIONS AND MANAGEMENT OF THESE STATE AGENCIES, THEIR FUNDS, AND ANY OTHER MATTERS,"

begs leave to report as follows:

The purpose and duties of the Committee and the subject matter and scope of its investigative authority was:

- (1) To follow up on the audits of the Department of Land and Natural Resources' Special Land and Development Fund, Report No. 19-12, and Agribusiness Development Corporation, Report No. 21-01;
- (2) To examine the recommendations made in those audits; and
- (3) For purposes of improving the operations and management of these state agencies, their funds, and any other matters.



Over the course of more than six months, your Committee, conducted eighteen public hearings with twenty-two subpoenaed witnesses and received thousands of pages of documents. Your Committee presents its findings and recommendations, including proposed legislation, in the attached report.

Respectfully submitted on  
behalf of the members of the  
House Investigative Committee  
established under H.R. No. 164,

*Debra A. Belatti*

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DEBRA AU BELATTI, Chair



# FINAL REPORT OF THE HOUSE INVESTIGATIVE COMMITTEE ESTABLISHED UNDER HR164

Findings and Recommendations, Including Proposed Legislation

HOUSE OF REPRESENTATIVES  
STATE OF HAWAII | THIRTY-FIRST LEGISLATURE



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# EXECUTIVE SUMMARY

## Executive Summary

Vested with the responsibility of enacting state laws and appropriating public funds, the Legislature is focused on transparency, accountability, and the proper functioning of state government. Critical to this responsibility is oversight over state departments and agencies.

Two recent performance audits conducted by the State Auditor at the direction of the Legislature made critical findings regarding the Special Land and Development Fund (SLDF) within the Department of Land and Natural Resources (DLNR) and the Agribusiness Development Corporation (ADC). The Auditor's findings and recommendations were contained in Audit Report No. 19-12 (regarding SLDF) and Audit Report No. 21-01 (regarding ADC). After reviewing Audit Report Nos. 19-12 and 21-01, the House of Representatives determined that further investigation was needed to evaluate and address these state agencies and more specifically, the management, oversight, and disposition of public lands.

The House Investigative Committee (Committee) was established on April 29, 2021, by adoption of House Resolution No. 164, Regular Session of 2021 (HR164), and Committee membership was finalized on June 16, 2021. The Committee was tasked with submitting its written findings and recommendations, including any proposed legislation, to the House of Representatives for the 2022 legislative session. The Committee received thousands of pages of documents from numerous state agencies. In addition, the Committee conducted 18 public hearings with 22 subpoenaed witnesses. The Committee wishes to acknowledge the leadership and staff of DLNR and ADC and their openness to working with the Committee over these past months.

The Committee's work focused on Audit Report Nos. 19-12 and 21-01 and the audited agencies: DLNR and ADC. During the Committee's investigation, it became apparent that the State Auditor had intentionally omitted relevant findings from the subject audits. These shortcomings led the Committee to question the analysis of the Office of the State Auditor and to seek further information. Unfortunately, the State Auditor refused all attempts to engage in a productive discussion, including resorting to litigation. Based on the limited information received from the Office of the State Auditor, the Committee recommends further independent investigation of the operations of the Office of the Auditor and recommends legislation to improve transparency and collaboration with the Office of the Auditor.

The Committee's deep dive into the operations of DLNR and ADC revealed common themes and challenges in the management of public lands. Among the Committee's recommendations that apply to both agencies are the needs for strategic planning, changes to statutory authority, publishing of written policies and procedures, and updates to lease

# EXECUTIVE SUMMARY

agreements. The Committee made additional recommendations specific to each agency, as summarized in Chapter 5.

Finally, the Committee drafted proposed legislation for both DLNR and ADC to provide clear legislative intent and authority to assist each agency in carrying out their statutory functions. For DLNR, the Committee recommends that the Legislature:

- (1) Make consistent the various lease extension statutory language in Chapter 171, Hawaii Revised Statutes (HRS), specifically by:
  - (A) Allowing all types of leases to be extended, but requiring that all lease extensions, regardless of whether those leases were obtained through direct negotiation or the public auction process, use the most current lease form and leasing practices and policies, including provisions to allow the State to be paid its fair share of sublease income;
  - (B) Allowing the State to charge rent premiums on extended leases to compensate the State for forgoing the reversionary interest and incorporate the value of the improvements on the property; and
  - (C) Requiring a lessee to pay for the appraisal required for the reopening of rent in the extended lease term and precluding the lessee from protesting the rent so determined; and
- (2) Allow DLNR to negotiate direct leases for five to 10 years with a basic appraisal process for those properties where there is no interest in the public auction as determined by responses to a Request for Interest solicitation or by holding a public auction.

For ADC, the Committee recommends amending Chapter 163D, HRS, to refocus, update, and streamline ADC's authorizing statute to reflect the current state of agriculture and focus on Hawaii's needs for local agricultural products in addition to exports. Specifically, the Committee recommends the following changes to Chapter 163D, HRS:

- (1) ADC should prioritize lease agreements designed to increase the production of local agricultural products for local consumption and supporting small farmers, while continuing to focus on commercial exports;
- (2) Align plans and projects with recently set goals for the purchase of local agriculture products for local consumption;
- (3) Deemphasize marketing and emphasize production for local consumption; and



# EXECUTIVE SUMMARY

- (4) Amend ADC's powers, duties, and responsibilities to repeal duplicative functions performed by other agencies.

The Committee also recommends that ADC coordinate and administer programs to increase local production of agricultural products for local consumption, reduce the State's reliance on imported agricultural products, and increase access to farmland and related infrastructure for local farmers and cooperatives.

By introducing the above statutory changes for legislative consideration and by working closely with DLNR and ADC throughout the 2022 Regular Session, the Committee intends to continue its oversight function, thereby improving transparency and accountability within state government.

# CHAPTER 1: BACKGROUND

## Chapter 1: Background

### INTRODUCTION

The Committee established under HR164 presents its findings and recommendations, including proposed legislation, to the House of Representatives in this report. Pursuant to Chapter 21, HRS, the Committee adopted rules consistent with Chapter 21, including rules to subpoena records and the attendance of witnesses to testify under oath. The Committee held a series of hearings<sup>1</sup> from September 2021 to January 2022. This report contains information obtained from those hearings, evidence produced to the Committee, and the Committee's findings and recommendations, including proposed legislation.

House Majority Leader Della Au Belatti served as Chair of the Committee and presided over the meetings and hearings, with the assistance of Representative Linda Ichiyama who served as Vice Chair of the Committee. The following six members from the House of Representatives also served on the Committee: House Minority Leader Val Okimoto, House Committee on Water & Land Chair David A. Tarnas, House Committee on Agriculture Chair Mark J. Hashem, House Committee on Agriculture Vice Chair Amy A. Perruso, House Committee on Legislative Management Chair Dale T. Kobayashi, and House Committee on Legislative Management Member Kyle T. Yamashita.

### IMPETUS OF THE INVESTIGATIVE COMMITTEE

Vested with the responsibility of determining state policy and appropriating public funds, the Legislature is focused on transparency, accountability, and the proper functioning of state government. To promote these interests, the Legislature periodically authorizes audits to examine the efficiency and effectiveness of government programs or agencies and assess the financial status of the State and its agencies.

Two recent performance audits conducted by the State Auditor at the direction of the Legislature made significant findings critical of DLNR and ADC. The audit of SLDF (Audit Report No. 19-12) submitted to the Legislature in June 2019 made several recommendations for the Board of Land and Natural Resources (BLNR), DLNR's Land Division, and DLNR based on the following findings:

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<sup>1</sup> [Section 21-2, HRS](#), defines "hearing" as "any meeting in the course of an investigatory proceeding, other than a preliminary conference or interview at which no testimony is taken under oath, conducted by an investigating committee for the purpose of taking testimony or receiving other evidence. A hearing may be open to the public or closed to the public."

# CHAPTER 1: BACKGROUND

- (1) Without a strategic plan for its public lands, the management of leases and revocable permits (RPs) by DLNR's Land Division defaults to maintaining the status quo rather than exploring higher and better use;
- (2) Lack of complete and coherent policies and procedures prevents DLNR's Land Division from adequately managing its leases and RPs; and
- (3) Lack of transparency and accountability hinders the administration of SLDF.<sup>2</sup>

The performance audit of ADC (Audit Report No. 21-01) submitted to the Legislature in January 2021 made 28 recommendations for ADC and five recommendations for its Board of Directors (ADC Board) to address the following findings:

- (1) ADC has done little to fill the economic void created by the closure of the sugar and pineapple plantations;
- (2) ADC's land management struggles expose the State to unnecessary risk; and
- (3) The ADC Board provides minimal guidance and oversight to ADC.<sup>3</sup>

Audit Report No. 21-01 also notes in its Summary of Findings that ADC's financial records were not auditable.<sup>4</sup>

After reviewing Audit Report Nos. 19-12 and 21-01, the House of Representatives determined that important investigative follow up work was needed to evaluate and address the significant issues at play and committed as a body to focus on the management, oversight, and disposition of public lands.

## FOCUS OF THE INVESTIGATIVE COMMITTEE

According to HR164, the purpose and duties of the Committee and subject matter and scope of its investigative authority, are:

- (1) To follow up on the audits of SLDF, Audit Report No. 19-12, and ADC, Audit Report No. 21-01;
- (2) To examine the recommendations made in those audits; and

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<sup>2</sup> [Audit Report No. 19-12.](#)

<sup>3</sup> [Audit Report No. 21-01.](#)

<sup>4</sup> [Audit Report No. 21-01, p. 4-5.](#)

# CHAPTER 1: BACKGROUND

- (3) For purposes of improving the operations and management of these state agencies, their funds, and any other matters.<sup>5</sup>

Although the Committee's initial investigation focused on Audit Report Nos. 19-12 and 21-01 and the audited agencies DLNR and ADC, the Committee expanded its focus to include the Office of the Auditor when the Committee was: (1) met with evasion by the Auditor in answering simple questions about the audit process; (2) prevented from reviewing documents that are the basis of the Auditor's findings and recommendations; and (3) apprised of critical omissions in the audit process that may constitute malfeasance and noncompliance with generally accepted government auditing standards utilized by government auditing agencies throughout the country and represent a larger pattern by Auditor Kondo to unilaterally decide not to report on certain substantive and critical issues discovered in the field.

The Office of the Auditor raised various concerns that the Committee exceeded its legitimate legal authority, and these concerns were brought up and discussed by the Committee. However, the Committee maintains that an investigation is not a predetermined process. An investigation is a factfinding process by which the Committee adduces testimony and evidence from credible sources and follows the evidence where it leads. HR164 was specifically drafted to allow the Committee's investigation to delve into other matters and the members of the Committee took their responsibility seriously in not turning a blind eye to evidence that was critical of any state agency involved in Audit Report Nos. 19-12 and 21-01, including the Office of the Auditor. Furthermore, the Committee's interpretation of its investigative authority is validated by Congressional practice and other states. If an oversight committee investigating audits has questions about the auditor, the way the audit was conducted, or omissions from the audit, it is within the jurisdiction and the responsibility of the oversight committee to follow up and investigate further. It may be unpopular, but it is appropriate.

## RULES AND PROCEDURES OF THE INVESTIGATIVE COMMITTEE

The Committee adopted rules of procedure in accordance with Chapter 21, HRS, and HR164. The Committee's Rules may be found on the State Capitol website.<sup>6</sup> In summary, the Committee's hearings were conducted in a public setting. Subpoenas were served and witnesses were given proper notice. Unlike other hearings of the Legislature, only those individuals subpoenaed by the Committee testified. Subpoenaed witnesses had certain rights

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<sup>5</sup> [HR164, Regular Session of 2021.](#)

<sup>6</sup> [Rules of the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01.](#)

# CHAPTER 1: BACKGROUND

during the investigative process, including the right to submit proposed questions to the Committee for the questioning of any witness at a hearing and the right to make written responses to the Committee's draft findings and recommendations. All proposed questions submitted to the Committee were provided to all Committee members; and Committee members were not curtailed in asking questions of subpoenaed witnesses in Committee hearings.

From September 2021 to January 2022, the Committee conducted 18 public hearings with 22 subpoenaed witnesses. At the Committee's hearings, witnesses were questioned under oath and were allowed to be accompanied and advised by counsel of their own choosing. Although the State Capitol was closed to the public due to the COVID-19 pandemic, Committee members and subpoenaed witnesses participated in public hearings either in-person or remotely via Zoom. All public hearings were livestreamed, recorded, and posted on YouTube for public viewing. These videos remain available to the public on the Hawaii House of Representatives YouTube channel, which may be accessed through the State Capitol website.<sup>7</sup>

[Appendix A](#) lists the dates of the hearings, witnesses, and subject of their testimony.

The Clerk of the House of Representatives served as the official repository of the Committee's records. The Committee issued 21 subpoenas duces tecum to eight entities, including four to the DLNR, seven to the ADC, and one to the Office of the Auditor. [Appendix B](#) lists the subpoenaed entities, and copies of the subpoenas duces tecum can be accessed at the State Capitol website.

Due to time constraints, the Committee was unable to conduct closing hearings with the agencies that were examined during its work, as intended. Instead, the Committee allowed these agencies to provide written closing statements to the Committee on the matters that were raised during the Committee's work. These statements are attached to this report under [Appendix C](#).

Pursuant to the Committee's rules, subpoenaed witnesses were provided with a Draft Report of the Committee's findings and recommendations on December 30, 2021, and given 14 days to submit written responses. The written responses to the Draft Report are included under [Appendix D](#).

Because the Committee received corrected and additional testimony from its final witness which raised several questions for members of the Committee, the Committee conducted an additional public hearing on January 10, 2022, and issued two final subpoenas duces tecum

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<sup>7</sup> [Hawaii House of Representatives, Videos, YouTube \(last visited January 12, 2022\)](#).

# CHAPTER 1: BACKGROUND

on January 11, 2022, and January 13, 2022. To allow Committee members the opportunity to thoroughly review the written responses to the Committee's Draft Report, consider the additional hearing and documentary evidence received by the Committee, and finalize the Committee's report, the Committee requested and received an extension of 10 days from the Speaker of the House of Representatives to complete its Final Report and provide that Report to the House of Representatives on January 29, 2022.

## OBSTACLES AND OPPORTUNITIES

Given the Committee's expansive focus on long-standing issues in state government, time was a significant obstacle. The Committee was established on April 29, 2021, by adoption of HR164, and Committee membership was finalized on June 16, 2021. The Committee was tasked with submitting its written findings and recommendations, including any proposed legislation, to the House of Representatives prior to the convening of the Regular Session of 2022.<sup>8</sup> This compressed timeline of seven months to investigate, deliberate, and submit written findings and recommendations, including any proposed legislation, from June 16, 2021, to January 19, 2022, was extremely challenging. Coordinating meetings and hearings with 22 witnesses and reviewing tens of thousands of pieces of evidence was very difficult for members and legislative staff of the Committee who have other interim responsibilities.

As a result of the time constraints, the Committee was unable to investigate certain important issues that should be explored further. The Committee feels that it only began to touch on some of the issues that connect the two audits and did not have time to address certain questions thoroughly. Should the House of Representatives decide to establish future Chapter 21 investigative committees, the Committee recommends that investigative committees be established to operate for a longer period, especially if the investigation involves a broad, complex topic or long-standing issues.

The Committee also recommends that it be a standard practice for subject matter chairs and vice chairs to be on any future investigative committees that are looking into matters under their jurisdiction. The Committee recognizes that there may be other legislators who are interested and willing to commit time to an investigative committee. However, subject matter chairs and vice chairs with the appropriate oversight responsibilities depending on the jurisdiction of their Standing Committee assignments are best positioned to conduct the work of a Chapter 21 investigative committee and carry out the legislative recommendations of a Chapter 21 investigative committee as needed in subsequent legislative sessions.

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<sup>8</sup> [HR164, Regular Session of 2021](#).

# CHAPTER 1: BACKGROUND

The House of Representatives may also want to consider establishing a formal standing committee that could work over the course of a legislative biennium to consider complicated topics of deep concern to the Legislature. This may be the most efficient and orderly way for the House of Representatives to proceed rather than just creating ad hoc investigative committees where members must learn a new process. The House of Representatives should examine the different types of investigative committees used by Congress and other state legislatures. For example, future House investigative committees could be modeled after the United States House of Representatives' Committee on Oversight and Reform, a standing committee tasked with "a comprehensive role in the conduct of oversight,"<sup>9</sup> or congressional committees created and tasked for specific purposes, such as the United States House of Representatives' Select Committee to Investigate the January 6<sup>th</sup> Attack on the United States Capitol.<sup>10</sup>

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<sup>9</sup> [Congressional Research Service, \*Congressional Oversight Manual\* \(Updated Jan. 16, 2020\), p. 10.](#)

<sup>10</sup> [United States House of Representatives Select Committee to Investigate the January 6th Attack on the United States Capitol, \*About\* \(last visited Jan. 10, 2022\).](#)

# CHAPTER 2: SPECIAL LAND AND DEVELOPMENT FUND

## Chapter 2: Special Land and Development Fund

### INTRODUCTION

As stated previously, Audit Report No. 19-12 related to SLDF made several recommendations for the BLNR, DLNR's Land Division, and DLNR based on the following findings:

- (1) Without a strategic plan for its public lands, the management of leases and RPs by DLNR's Land Division defaults to maintaining the status quo rather than exploring higher and better use;
- (2) Lack of complete and coherent policies and procedures prevents DLNR's Land Division from adequately managing its leases and RPs; and
- (3) Lack of transparency and accountability hinders the administration of SLDF.<sup>11</sup>

Following extensive inquiry, review of documents, and questioning of 10 witnesses related to DLNR, the Committee made findings and recommendations related to strategic planning of DLNR's revenue-generating lands, statutory amendments related to DLNR's land management practices, and DLNR's financial and accounting practices.

### STRATEGIC PLANNING

#### Commentary

Audit Report No. 19-12 found DLNR lacked a strategic plan, asset management plan, and property marketing plan.<sup>12</sup> Testimony from BLNR members and Land Division officials indicated that DLNR is currently working on a management and marketing plan for those properties with commercial development potential.<sup>13</sup> They also noted that they had limited capacity of staff and funding to do long-term strategic planning. They urged the Legislature to provide additional resources and staff so DLNR could do the work and contract with a firm to assist them in this effort.

The Committee finds that the Auditor's recommendation that the Land Division prepare a long-range strategic plan for all leases, RPs, and public lands that includes criteria for assessment based on benchmarks and other measurable objectives is too broad.<sup>14</sup> Audit

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<sup>11</sup> [Audit Report No. 19-12.](#)

<sup>12</sup> [Audit Report No. 19-12.](#)

<sup>13</sup> [Testimony of BLNR Chairperson Suzanne D. Case on September 14, 2021.](#)

<sup>14</sup> [Audit Report No. 19-12, p. 42.](#)



# CHAPTER 2: SPECIAL LAND AND DEVELOPMENT FUND

Report No. 19-12 is mainly focused on DLNR's land management practices for its revenue-generating leases and RPs since these provide the majority of SLDF's revenues.<sup>15</sup> The Committee recognizes that DLNR has already begun developing a strategic plan in accordance with the audit recommendation<sup>16</sup> and recommends that DLNR focus its efforts on developing a strategic plan for its revenue-generating land. DLNR already has detailed plans for projects that are deemed a high priority in terms of income generation, such as the proposed industrial lease and business park at Pulehunui, Maui and proposed mixed-use development in East Kapolei, Oahu adjacent to the University of Hawaii West Oahu planned rail station.<sup>17</sup>

## Recommendation

The Committee recommends that DLNR's Land Division prioritize developing a strategic plan for DLNR's revenue-generating lands since these provide the majority of SLDF's revenues and fund significant portions of DLNR's programs.

## LEASES AND REVOCABLE PERMITS

### Lease Extensions

#### Commentary

##### Lease Extension Laws Generally

Over the past decade, the Legislature has enacted a patchwork of laws regarding lease extensions:

- Act 207, Session Laws of Hawaii (SLH) 2011, amended section 171-36, HRS, to increase the maximum aggregate of the initial term and any extension of intensive agricultural, aquaculture, commercial, mariculture, special livestock, pasture, or industrial leases of public lands from 55 years to 65 years;<sup>18</sup>
- Act 215, SLH 2017, codified under sections 171-41.6 and 171-95.1, HRS, allows:

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<sup>15</sup> Audit Report No. 19-12, p. 5 (Impetus, Scope, and Methodology of the Audit of SLDF).

<sup>16</sup> Testimony of BLNR Chairperson Suzanne D. Case on September 14, 2021.

<sup>17</sup> Audit Report No. 19-12, p. 55.

<sup>18</sup> See generally S. Stand. Com. Rep. No. 950 (2011) (according to the Senate Committee on Water, Land, and Housing, the 55-year limit for intensive agricultural, aquaculture, commercial, mariculture, special livestock, pasture, or industrial leases was nonsensical since public land leases generally have a maximum overall term of 65 years).

# CHAPTER 2: SPECIAL LAND AND DEVELOPMENT FUND

- Current lessees that are within the last ten years of their commercial or industrial land lease to directly negotiate with BLNR to further lease the land if the lessee is the sole qualified responder to a Request for Interest and Request for Qualifications published by BLNR for a new lease on the land; and
- Public land leases issued to school or government entities to be extended, without public auction, beyond the 65-year maximum lease term, except for conservation land leased to the University of Hawaii that has been subleased for purposes of building an astronomical observatory;
- Act 149, SLH 2018, codified under Part X of Chapter 171, HRS, established a 10-year pilot project to allow BLNR to modify or extend by 40 years the terms of intensive agricultural, aquaculture, commercial, mariculture, special livestock, pasture, hotel, resort, or industrial leases of public lands within an area designated as the Hilo Community Economic District to the extent necessary to qualify the lease for mortgage lending or guaranty purposes or to amortize the cost of substantial improvements paid for by the lessee without institutional financing; and
- Act 236, SLH 2021, codified under section 171-36.5, HRS, authorizes lease extensions up to 40 years for commercial, industrial, resort, mixed-use, or government leases, other than those to which the University of Hawaii is a party, that have not been assigned or transferred within the last 10 years, if the lessee commits to substantial improvement to the existing improvements.

Testimony by DLNR Land Division officials made it clear that because of the numerous laws passed by the Legislature over the years regarding lease extensions, the result was that lease extension requests had to be processed with different criteria.<sup>19</sup> This inconsistency in criteria and process for different leases caused confusion and discontent among lessees and was onerous to staff and BLNR members. The Committee finds that amending Chapter 171, HRS, to make all lease extensions consistent would address this situation. The goal is for the requirements for lease extensions to be the same for all parcels and lessees.

There is debate between the Office of the Auditor and DLNR regarding the appropriateness of lease extensions granted by BLNR, particularly to Kanoiehua Industrial Area (KIA) lessees. The Office of the Auditor believes that granting extensions to KIA lessees goes against the public policy of opening state lands to new lessees and represents a lost opportunity to

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<sup>19</sup> Testimony of BLNR Chairperson Suzanne D. Case on September 14, 2021.

# CHAPTER 2: SPECIAL LAND AND DEVELOPMENT FUND

receive market rents based on improved land.<sup>20</sup> In contrast, DLNR stated that the Legislature had determined that it was "in the public interest to retain the existing KIA tenants to the greatest extent feasible, rather than allowing leases to expire and seeking higher rents."<sup>21</sup>

DLNR's current interpretation of legislative intent is that, in general, lease extension applications that qualify under the statute should be approved for extension. The Legislature has the opportunity and responsibility to clarify legislative intent if it disagrees.

The Committee agrees with Land Division officials that granting lease extensions can have advantages for the State and further the State's public trust responsibilities. The Land Division has cited several reasons that extensions are advantageous to the State, including motivating lessees to invest in property improvements, keeping leases occupied rather than properties becoming vacant and then creating maintenance and upkeep costs for DLNR, keeping a tenant who has been a consistent revenue source, and avoiding the cost of auctioning the property.

However, the Committee finds statutory modifications are needed to allow the State to derive better value from lease extensions. These include:

- (1) Allowing all types of leases to be extended, but requiring that all lease extensions, regardless of whether those leases were obtained through direct negotiation or the public auction process, use the most current lease form and leasing practices and policies, including provisions to allow the State to be paid its fair share of sublease income;
- (2) Allowing the State to charge rent premiums for lease extensions; and
- (3) Requiring the lessee to pay for an appraisal for rent reopening and precluding the lessee from protesting the rent so determined.

## Updating Leases

Toward the latter part of the Committee's work, the Committee learned about specific issues that are impacting the extension of leases. According to DLNR, some lessees are resisting DLNR's efforts to update leases to the most current form when approving a lease extension. These lessees argue that their lease should be extended based on its original terms, some of which may be sixty or more years old.

There are also questions regarding DLNR's ability to update leases issued through the public auction process due to the different lease extension laws. According to discussions with the

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<sup>20</sup> [Audit Report No. 19-12, p. 11.](#)

<sup>21</sup> [Audit Report No. 19-12, p. 56.](#)

# CHAPTER 2: SPECIAL LAND AND DEVELOPMENT FUND

BLNR Chairperson and documentation submitted to BLNR, the DLNR Deputy Attorney General has construed certain legislation, specifically Act 149, SLH 2018, as only allowing DLNR to update directly negotiated leases, not leases issued through the public auction process, because there is no express statutory language authorizing or requiring DLNR to update leases.<sup>22</sup> The Land Division stated that the differences in legislation leads to disparate results for lessees seeking extensions and that it does not believe it is in the best interest of the State to extend leases based on the outdated, original terms and conditions.<sup>23</sup> The issue of updating leases is causing consternation among lessees, particularly those with leases that were obtained through auction, who have applied for lease extensions and were rejected or action delayed.

Audit Report No. 19-12 briefly highlighted the difficulties DLNR faces when trying to update lease agreements to obtain a share of sublease income.<sup>24</sup> In 2012, one of DLNR's lessees was making approximately \$300,000 in sublease income annually to "manage" property while only paying DLNR \$74,500 a year for the same property.<sup>25</sup> When the lessee requested approval for two subleases, the Land Division requested a 33 percent share of the sublease rent. The lessee objected to this request. The original lease had fixed rents at that time and did not include a provision allowing the State to share in sublease income. BLNR approved the two subleases without taking a share of the sublease income.

To remedy the issue surrounding updated leases, DLNR officials recommended that the Legislature provide uniform, clear statutory authorization for DLNR to update leases to include BLNR's current form, practices, and policies.<sup>26</sup>

## Rent Premiums

Audit Report No. 19-12 criticized the Land Division for not getting into the business of space leasing rather than ground leases.<sup>27</sup> The Report suggested that the State would derive a

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<sup>22</sup> [DLNR Land Division, Report to the Board of Land and Natural Resources on Issues Encountered by Land Division in Processing Applications for Lease Extensions Statewide, p. 1 \(Jan. 14, 2022\).](#)

<sup>23</sup> [DLNR Land Division, Report to the Board of Land and Natural Resources on Issues Encountered by Land Division in Processing Applications for Lease Extensions Statewide, p. 5 \(Jan. 14, 2022\).](#)

<sup>24</sup> [Audit Report No. 19-12.](#)

<sup>25</sup> [Audit Report No. 19-12, p. 18.](#)

<sup>26</sup> See [DLNR Land Division, Report to the Board of Land and Natural Resources on Issues Encountered by Land Division in Processing Applications for Lease Extensions Statewide, p. 6 \(Jan. 14, 2022\).](#)

<sup>27</sup> [Audit Report No. 19-12.](#)

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higher profit by allowing leases to expire, assuming ownership of the buildings developed on the lease site, and then leasing out spaces in the building.

BLNR members and Land Division officials stated that it would not be cost-efficient for the State to do space leases. The State did not have sufficient staff or resources to do the work to repair and maintain the buildings, carry out all the responsibilities of property management, and manage the multiple space leases. They testified that it was more cost-effective for the State to extend the lease of a lessee with a building in which they sublet space.<sup>28</sup>

To improve this process and allow the State to obtain its fair share of revenues from these extensions of leases with improvements, a BLNR member urged the Legislature to authorize DLNR to include the value of the improvements in the calculation of the appraised value done for the lease extensions, while not including any mandatory improvements in the appraisal calculation.<sup>29</sup> DLNR and BLNR believe that a statutory basis should be in place for BLNR to charge lessees for deferral of the State's reversionary interest, similar to premiums and additional rent provided for in section 171-36, HRS, when consenting to assignments and subleasing.<sup>30</sup> This belief is based on an informal consultation with the Department of the Attorney General that indicated that a lease extension premium without contractual or statutory basis would be unenforceable.<sup>31</sup>

## Appraisals

In its response to Audit Report No. 19-12, DLNR stated that it previously attempted to include, as conditions in lease extensions, that "the lessee pay for the appraisal required for reopening of rent in the extended lease term and that the lessee be precluded from protesting the rent so determined," but the Attorney General advised DLNR that those conditions were inconsistent with Chapter 171, HRS, and could not be enforced.<sup>32</sup> According to DLNR's Land Administrator, disagreements in the appraisal process can take time to resolve due to mandatory mediation and arbitration pursuant to section 171-17, HRS.<sup>33</sup> DLNR officials recommended that the lessee be required to pay for the appraisal in the rent reopening during a lease extension and not be given the opportunity to contest the appraisal.

## **Recommendation**

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<sup>28</sup> Testimony of DLNR Assistant Administrator Kevin E. Moore on September 14, 2021.

<sup>29</sup> Testimony of BLNR Member Christopher Yuen on November 29, 2021.

<sup>30</sup> Audit Report No. 19-12, p. 19; see HRS §171-36.

<sup>31</sup> Audit Report No. 19-12, p. 57.

<sup>32</sup> Audit Report No. 19-12, p. 57.

<sup>33</sup> See HRS §171-17.

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The Committee recommends that the Legislature regularize and make consistent the various lease extension statutory language in Chapter 171, HRS. The Legislature should also amend the lease extension laws to specifically:

- (1) Allow all types of leases to be extended, but require that all lease extensions, regardless of whether those leases were obtained through direct negotiation or the public auction process, use the most current lease form and leasing practices and policies, including provisions to allow the State to be paid its fair share of sublease income;
- (2) Allow the State to charge rent premiums on extended leases to compensate the State for forgoing the reversionary interest and incorporate the value of the improvements on the property; and
- (3) Require a lessee to pay for the appraisal required for the reopening of rent in the extended lease term and preclude the lessee from protesting the rent so determined.

## **Standardized Lease Template**

### **Commentary**

The Committee heard testimony regarding various irregularities in DLNR leases.<sup>34</sup> For example, there were significant differences between two hotel leases where one lease had several provisions that did not conform with best practices for leases. DLNR testified that the differences between the leases was an oversight and that it is in the process of correcting its lease to conform with best practices.<sup>35</sup> To avoid similar issues in the future, the Committee finds that DLNR should develop a standardized lease template that incorporates statutory provisions and current industry leasing practices, including provisions to address environmental issues in the event environmental mitigation is needed. DLNR should use this template for all new leases and strive to update its leases, some of which are decades old, with the standardized lease template.

### **Recommendation**

The Committee recommends that DLNR create a standardized lease template that incorporates statutory provisions and current industry leasing terms and practices, including provisions to address environmental issues in the event environmental mitigation is needed.

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<sup>34</sup> [Testimony of DLNR Assistant Administrator Kevin E. Moore on September 14, 2021.](#)

<sup>35</sup> [Testimony of DLNR Assistant Administrator Kevin E. Moore on September 14, 2021.](#)

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DLNR should use this standardized lease template for all new leases and to update its current leases.

## **Direct Negotiation**

### **Commentary**

Testimony from BLNR members described situations in which the law required leases to be auctioned even though there was little or no interest in the property by potential lessees.<sup>36</sup> DLNR officials and BLNR members suggested that the Legislature amend the statute to allow DLNR to directly negotiate leases if there was no response or only one response to a Request for Interest in a property.

### **Recommendation**

The Committee recommends that for those properties where there is no interest in the public auction as determined by responses to a Request for Interest solicitation or by holding a public auction, DLNR be allowed to negotiate direct leases for five to 10 years with a basic appraisal process.

## **Inspections**

### **Commentary**

Audit Report No. 19-12 found that the Land Division does not conduct regular annual inspections of its lease properties to ensure that lessees are adequately maintaining improvements and complying with other lease terms.<sup>37</sup> All four district land agents told the Office of the Auditor that annual inspections of leases and RPs were not possible due to limited staff resources. Rather than having DLNR land agents conduct the inspections, the Committee recommends that DLNR require lessees to pay for third-party inspectors selected by DLNR to conduct physical inspections of the leased property every five years. If the third-party inspector finds any defaults with the lease terms, the lessee should be required to take any corrective actions recommended by the inspector.

### **Recommendation**

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<sup>36</sup> [Testimony of BLNR Chairperson Suzanne D. Case on September 14, 2021](#); [Testimony of BLNR Member Christopher Yuen on November 29, 2021](#).

<sup>37</sup> [Audit Report No. 19-12, p. 29-30](#).

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The Committee recommends that DLNR require third-party inspectors to conduct physical inspections of all leased properties every five years to ensure compliance with lease terms. DLNR should choose the inspectors and require the lessee to pay the inspection fee and make the corrections recommended in the inspection report.

## POLICIES AND PROCEDURES

### **Policies, Procedures, and Practices**

#### **Commentary**

Audit Report No. 19-12 recommended that:

- (1) The Land Division develop and document policies and procedures for:
  - (A) Monitoring of leases and RPs;
  - (B) Periodic and regular reviews of RP rents;
  - (C) Verification of required receipts to validate substantial property improvements required for 10-year lease extensions; and
  - (D) Timely and effective collection of lease and RP rents; and
- (2) DLNR:
  - (A) Establish policies and procedures to accurately account for and report the activities of SLDF to the Legislature; and
  - (B) Establish and adhere to formal written procedures for the collection of all percentage rent due from lessees.<sup>38</sup>

In its status update to the Office of the Auditor, the Land Division reported that it aspires to inspect every lease and RP at least once every two years using its standard inspection report form to note compliance or noncompliance with lease conditions. The Land Division is developing written procedures to supplement the inspection report template currently in place for land agents to conduct follow-up inspections on completed improvements and its existing practices, reports, and forms for close-out inspections and the collection of percentage rent. Although the Land Division indicated that it already had a procedure in place for timely and effective collection of lease and RP rents, it stated that it will be updating

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<sup>38</sup> [Audit Report No. 19-12, p. 42-44.](#)



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its written procedures for tracking rent, liability insurance certificates, and performance bonds to conform with the functionality of its new Voyager land inventory system.

Audit Report No. 19-12 criticized DLNR for not optimizing lease rent as a standard practice when setting rents for RPs and leases.<sup>39</sup> Discussions with BLNR members and Land Division officials made it clear that BLNR has been taking deliberate steps to phase in increases in the rents for RPs. Rather than reviewing all RPs at once and imposing across-the-board caps on annual rent adjustments, BLNR reviews RPs by county and classification, which allows it to better analyze recommended rent increases to bring RP rents in line with market rates. The practice was first adopted in 2018 under the leadership of BLNR Chairperson Suzanne D. Case pursuant to the recommendations made by DLNR's Revocable Permits Task Force in 2016 and a portfolio appraisal report on 113 RPs completed in May 2018.<sup>40</sup> The annual review of RPs led BLNR to make significant adjustments to RP rents beginning in 2018<sup>41</sup> and the Committee finds that this annual review could contribute to better oversight, review, and implementation of rent premium increases, as contemplated above, if this is found to be in the best interest of the State and DLNR. According to DLNR, these policies and procedures related to RP rent adjustments are documented in its Board actions.

There appears to be disagreement between the Office of the Auditor and DLNR regarding DLNR's reporting of SLDF activities. Audit Report No. 19-12 found that DLNR did not accurately account for and report on the activities of SLDF to the Legislature.<sup>42</sup> However, DLNR believes that the Land Division has been transparent with the activities of SLDF. According to the Land Division, it submits its operating budget request to the Legislature each biennium and, because the Land Division's operations are fully funded from SLDF, the Legislature ultimately authorizes the Land Division to expend a specified sum from SLDF for its operating budget during the following fiscal years. Therefore, DLNR asserts that its expenditures from SLDF are transparent because they can only be made through appropriations by the Legislature.

DLNR indicated that it also accounts for and reports the activities of SLDF to the Legislature before the start of every legislative session through its submission of the Non-General Fund Report for SLDF.<sup>43</sup> The report summarizes the revenues, expenditures, and amounts transferred to other DLNR divisions and offices. DLNR regularly provided, upon request, a detailed list of each division or program that received funds transferred from SLDF and corresponding

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<sup>39</sup> [Audit Report No. 19-12](#).

<sup>40</sup> [Audit Report No. 19-12, p. 57](#).

<sup>41</sup> [Audit Report No. 19-12, p. 57](#).

<sup>42</sup> [Audit Report No. 19-12, p. 35](#).

<sup>43</sup> [Audit Report No. 19-12, p. 58](#); see [HRS §37-47](#).

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authorizations.<sup>44</sup> According to DLNR, its Fiscal Office already has established policies and procedures to accurately report the activities of SLDF. DLNR also provides an annual accounting of all receipts from lands described in section 5(f) of the Admission Act of 1959, which includes revenues to SLDF.<sup>45</sup>

## **Recommendation**

The Committee recommends that DLNR continue to develop and update its policies and procedures.

The Committee also recommends that DLNR and BLNR continue the recently instituted practice of annually reviewing the status and plans of each RP by county.

## **BLNR Training**

### **Commentary**

Audit Report No. 19-12 noted that BLNR training needs to be strengthened.<sup>46</sup> Discussions with the BLNR Chairperson and members revealed that BLNR conducts training on the Sunshine Law, ethics, and Native Hawaiian law, and BLNR training could be strengthened by adding training sessions on contested case hearings, the procurement code, and individual sessions with the leadership of each DLNR division, bureau, and office.<sup>47</sup> These additional training components would be useful and could be implemented through administrative changes without changes to statutes. The Committee notes that DLNR is already in the process of outlining formal training for new board members.<sup>48</sup>

Audit Report No. 19-12 suggested that a BLNR member may have acted inappropriately when extending leases to friends, which led to concerns among the Committee regarding conflicts of interest training.<sup>49</sup> After questioning other members of BLNR, the Committee found the current conflicts of interest training for members and the availability of a deputy attorney general at every meeting for consultation on conflicts of interest to be sufficient.<sup>50</sup> The

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<sup>44</sup> [Audit Report No. 19-12, p. 58.](#)

<sup>45</sup> [Audit Report No. 19-12, p. 58; see Act 178, SLH 2006.](#)

<sup>46</sup> [Audit Report No. 19-12.](#)

<sup>47</sup> [Testimony of BLNR Members Christopher Yuen and Vernon Char on November 29, 2021; Testimony of BLNR Chairperson Suzanne D. Case on September 14, 2021.](#)

<sup>48</sup> [Testimony of BLNR Chairperson Suzanne D. Case on September 14, 2021.](#)

<sup>49</sup> [Audit Report No. 19-12, p. 12, 49.](#)

<sup>50</sup> [Testimony of BLNR Members Christopher Yuen and Vernon Char on November 29, 2021; Testimony of BLNR Chairperson Suzanne D. Case on September 14, 2021.](#)

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Committee finds that the comments of that one board member referenced in Audit Report No. 19-12 appear to reflect that member and do not represent a lack of training to BLNR.

## **Recommendation**

The Committee recommends that DLNR continue its training for members of BLNR on the State's open meetings law (Sunshine Law), ethics, and Native Hawaiian law and add training sessions on contested case hearings, the procurement code, and individual sessions with the leadership of each DLNR division, bureau, and office. The Committee further recommends that BLNR continue its conflicts of interest training and continue to ensure that there is access to a deputy attorney general at every board meeting to answer questions about conflicts of interest.

## ACCOUNTING RECORDS

### **Accounting Practices**

#### **Commentary**

In 2017, DLNR management decided to start performing financial statement audits to get a better handle on their operations and financial measurements.<sup>51</sup> DLNR requested assistance from the Office of the Auditor in contracting for the services of a certified public accountant, who was engaged by the Auditor to conduct audits of the financial statements of DLNR for fiscal years ending June 30, 2017, 2018, and 2019, including consideration of the systems and procedures of accounting, reporting, and internal controls of DLNR. The objectives of the audits were to:

- (1) Provide a basis for an opinion by the certified public accountant as to whether the financial statements of DLNR are fairly presented, in all material respects, in accordance with United States generally accepted accounting principles;
- (2) Report on DLNR's internal control over financial reporting and compliance with certain provisions of laws, regulations, contracts, and grant agreements, including applicable provisions of the Hawaii Procurement Code and procurement rules, directives, and circulars—noncompliance with which could have a direct and material effect on the determination of financial statement amounts; and

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<sup>51</sup> Testimony of Ross R. Murakami, Partner at KMH LLP, on December 15, 2021.

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- (3) Ascertain the adequacy of the financial and other management information reports in providing officials at the different levels of DLNR with the proper information to plan, evaluate, control, and correct program activities.

DLNR and the Office of the Auditor entered into a Memorandum of Understanding, effective November 1, 2017, to provide for the payment by DLNR to the Auditor for the requested financial audits, as provided under section 23-3.5, HRS.<sup>52</sup> Pursuant to the Memorandum of Understanding, the Office of the Auditor selected and contracted with N&K CPAs, Inc. on October 25, 2017, to audit the financial statements of DLNR for fiscal years ending June 30, 2017, 2018, and 2019.<sup>53</sup>

During the process of conducting the audit of DLNR's financials for the fiscal year ending June 30, 2017, N&K CPAs, Inc. encountered difficulties with the underlying accounting support information provided to them and requested that DLNR obtain additional information, support, and analysis for those financials. DLNR hired KMH LLP<sup>54</sup> to provide professional accounting services assistance with preparation of various schedules, account balance reconciliations, and journal entries to prepare DLNR's financial statements for its fiscal year 2017 audit.

Despite Audit Report No. 19-12's language framing KMH LLP's work with DLNR as a "clean-up,"<sup>55</sup> the Committee notes that CPA firms are routinely hired by government departments or agencies to prepare for financial statement audits since government accounting generally uses cash basis accounting and financial statements are required to be presented using accrual basis accounting.<sup>56</sup> Preparing financial statements using accrual basis accounting is not part of a department's or agency's normal daily or monthly course of activities. The event occurs once a year and it takes a significant amount of effort for departments and agencies, such as DLNR, that have thousands of tenants. By 2017, it had been several years since DLNR had performed a financial statement audit.<sup>57</sup> Unlike other state departments and agencies,

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<sup>52</sup> See [HRS §23-3.5](#).

<sup>53</sup> [Hawaii Awards & Notices Data System](#).

<sup>54</sup> The KMH Solutions division of KMH LLP provides non-attest services or non-audit services to various state departments and agencies, which includes providing assistance to the department or agency management in preparing detailed accounting support, account analysis, and other work papers requested by the auditors to perform the annual financial statement audits. [Testimony of Ross R. Murakami, Partner at KMH LLP, on December 15, 2021](#).

<sup>55</sup> See "[Professional Judgment](#)" under Chapter 4 of this Report.

<sup>56</sup> [Testimony of Ross R. Murakami, Partner at KMH LLP, on December 15, 2021](#).

<sup>57</sup> [Testimony of Ross R. Murakami, Partner at KMH LLP, on December 15, 2021](#); see [Office of the Auditor, State of Hawaii, Reports \(last visited January 4, 2022\)](#) (the previous financial statement audit of DLNR was for the fiscal year ended June 30, 2009).

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DLNR is not required to have a financial statement audit.<sup>58</sup> DLNR's decision to start performing financial statement audits was self-initiated and discretionary.

A partner at KMH LLP testified before the Committee that DLNR management was very collaborative and open to improving its overall situation and that many of the recommendations made by KMH LLP were adopted.<sup>59</sup> The partner also testified that DLNR's transition from the SLIMS to Voyager system should improve things at DLNR because Voyager is an accounting system, whereas SLIMS was not set up to support the accounting measurements DLNR needed to perform on an annual basis.<sup>60</sup> The Committee finds that DLNR should continue to maintain and adopt the accounting practices that KMH LLP recommended as it assisted DLNR in organizing its financial records for future financial audits. Since adopting KMH LLP's recommendations, N&K CPAs, Inc. has been able to complete the audits of DLNR's financial statements for fiscal years ending June 30, 2017,<sup>61</sup> 2018,<sup>62</sup> 2019,<sup>63</sup> and 2020,<sup>64</sup> and is contracted to complete financial statement audits for fiscal years ending June 30, 2021, and 2022.<sup>65</sup> DLNR should continue to follow up on the recommendations provided by N&K CPAs, Inc. in its audits of DLNR's financial statements.

## Recommendation

The Committee recommends that DLNR maintain/adopt the accounting practices that KMH LLP recommended as it assisted DLNR in organizing its financial records for future financial audits.

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<sup>58</sup> [Testimony of Ross R. Murakami, Partner at KMH LLP, on December 15, 2021](#); see [Act 209, SLH 2017](#) (requiring a performance audit of SLDF, but not a financial audit of DLNR).

<sup>59</sup> [Testimony of Ross R. Murakami, Partner at KMH LLP, on December 15, 2021](#).

<sup>60</sup> [Testimony of Ross R. Murakami, Partner at KMH LLP, on December 15, 2021](#).

<sup>61</sup> [N&K CPAs, Inc., Financial Audit of the Department of Land and Natural Resources, State of Hawaii, Fiscal Year Ended June 30, 2017 \(May 2, 2019\)](#).

<sup>62</sup> [N&K CPAs, Inc., Department of Land and Natural Resources, State of Hawaii, Financial Statements with Independent Auditor's Report, Fiscal Year Ended June 30, 2018 \(Apr. 25, 2020\)](#).

<sup>63</sup> [N&K CPAs, Inc., Department of Land and Natural Resources, State of Hawaii, Financial Statements and Supplementary Information with Independent Auditor's Reports, Fiscal Year Ended June 30, 2019 \(Jan. 27, 2021\)](#).

<sup>64</sup> [N&K CPAs, Inc., Department of Land and Natural Resources, State of Hawaii, Financial Statements and Supplementary Information with Independent Auditor's Reports, Fiscal Year Ended June 30, 2020 \(Oct. 26, 2021\)](#).

<sup>65</sup> [Professional Services Award, RFQ No. 2020-01, Conduct Audits of the Financial Statements of the State of Hawaii, Department of Land and Natural Resources for the Fiscal Years Ending June 30, 2020, 2021, and 2022, Contract No. 68988, Hawaii Awards & Notices Data System](#).

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The Committee recommends that DLNR continue to follow up on the recommendations provided by N&K CPAs, Inc. in its audits of DLNR's financial statements for fiscal years ending June 30, 2017, 2018, 2019, 2020, 2021, and 2022.

## THE PUBLIC LAND TRUST AND CEDED LAND REVENUES

### Commentary

Audit Report No. 19-12 posed questions as to whether DLNR is superseding the Legislature's power to decide the appropriate use of ceded lands revenues and whether ceded land revenues are intended to fund DLNR.<sup>66</sup> The Report criticized DLNR for depositing ceded land lease revenue in SLDF after setting aside the amount owed to the Office of Hawaiian Affairs (OHA), rather than depositing the revenue into the general fund from which the Legislature would appropriate funds to the programs.<sup>67</sup>

The Report further declared that by keeping the ceded land revenues in SLDF, DLNR has assumed the State's fiduciary responsibility to decide how to use the revenues, including uses outside of the purposes of SLDF such as the support of public schools.<sup>68</sup> In response, BLNR members and Land Division officials stated their belief that their current arrangement is appropriate because section 171-19, HRS, specifically directs that the proceeds and monies from public lands, the definition of which includes ceded lands, be set apart in SLDF and because the ceded land revenues were spent on maintaining public lands, which is one of the purposes for which ceded land revenues must be spent.<sup>69</sup>

The Admission Act of 1959 requires ceded lands and the proceeds and income therefrom to be held as a public trust and managed and disposed of for one or more of the following purposes in such manner as the constitution and laws of the State may provide:

- (1) The support of the public schools and other public educational institutions;
- (2) The betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended;

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<sup>66</sup> [Audit Report No. 19-12, p. 37-40.](#)

<sup>67</sup> [Audit Report No. 19-12, p. 37-40.](#)

<sup>68</sup> [Audit Report No. 19-12, p. 39.](#)

<sup>69</sup> [Testimony of BLNR Member Christopher Yuen on November 29, 2021; Audit Report No. 19-12, p. 58.](#)

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- (3) The development of farm and home ownership on as widespread a basis as possible;
- (4) The making of public improvements; and
- (5) The provision of lands for public use.<sup>70</sup>

Pursuant to the Admission Act of 1959, the Legislature adopted a set of laws for the management and disposition of public lands, including ceded lands and lands the State acquired by other means,<sup>71</sup> which are now codified under Chapter 171, HRS.<sup>72</sup> All funds derived from the sale, lease, or other disposition of these public lands must be appropriated by state law; provided that the proceeds and income from the sale, lease, or other disposition of ceded lands are to be held in public trust for the five purposes enumerated above.<sup>73</sup>

Section 171-19, HRS, specifically provides that, subject to the Hawaiian Homes Commission Act, 1920, as amended, and section 5(f) of the Admission Act of 1959, all proceeds from the sale of public lands, including interest on deferred payments; monies collected for mineral and water rights; all rents from public land leases, licenses, and permits; all monies collected from lessees of public lands within industrial parks; all fees, fines, and other administrative charges collected under Chapters 171 (Management and Disposition of Public Lands) and 183C, HRS (Conservation District); a portion of the highway fuel tax collected under Chapter

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<sup>70</sup> [HI Admission Act §5](#); see [HI Const. art. XI, §10](#) (requiring public lands to be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law); see also [HI Const. art. XI, §1](#) (providing that "[a]ll public natural resources are held in trust by the State for the benefit of the people"); [HI Const. art. XII, §4](#) (requiring public lands granted to the State by section 5(b) of the Admission Act, excluding Hawaiian home lands, to be held by the State as a public trust for native Hawaiians and the general public); [HI Const. art. XVI, §7](#) (requiring legislation to comply with the trust provisions that Congress imposes upon the admission of the State of Hawaii in respect of the lands patented to the State by the United States or the proceeds and income therefrom).

<sup>71</sup> [HRS §171-2](#) (defining public lands as "all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including lands accreted after May 20, 2003, and not otherwise awarded, submerged lands, and lands beneath tidal waters that are suitable for reclamation, together with reclaimed lands that have been given the status of public lands under [chapter 171, HRS]," subject to exceptions).

<sup>72</sup> See [Act 32, SLH 1962](#) (recognizing that by virtue of section 15 of the Admission Act of 1959 there was a serious question as to whether Hawaii had any land laws at that time relating to the management and disposition of public lands).

<sup>73</sup> [HRS §171-18](#).

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243, HRS; all monies collected by DLNR for the commercial use of public trails and trail accesses; and private contributions for the management, maintenance, and development of trails and accesses must be set apart in SLDF for the following purposes as authorized by the Legislature:

- (1) To reimburse the general fund of the State for advances made that are required to be reimbursed from the proceeds derived from sales, leases, licenses, or permits of public lands;
- (2) For the planning, development, management, operations, or maintenance of all lands and improvements under the control and management of BLNR pursuant to title 12, HRS, including but not limited to permanent or temporary staff positions who may be appointed without regard to chapter 76, HRS;
- (3) To repurchase any land, including improvements, in the exercise by BLNR of any right of repurchase specifically reserved in any patent, deed, lease, or other documents or as provided by law;
- (4) For the payment of all appraisal fees; provided that all fees reimbursed to BLNR must be deposited in the fund;
- (5) For the payment of publication notices as required under Chapter 171, HRS; provided that all or a portion of the expenditures may be charged to the purchaser or lessee of public lands or any interest therein under rules adopted by BLNR;
- (6) For the management, maintenance, and development of trails and trail accesses under the jurisdiction of DLNR;
- (7) For the payment to private land developers who have contracted with BLNR for development of public lands under section 171-60, HRS;
- (8) For the payment of debt service on revenue bonds issued by DLNR, and the establishment of debt service and other reserves deemed necessary by BLNR;
- (9) To reimburse the general fund for debt service on general obligation bonds issued to finance DLNR projects, where the bonds are designated to be reimbursed from SLDF;
- (10) For the protection, planning, management, and regulation of water resources under chapter 174C, HRS; and



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(11) For other purposes of chapter 171, HRS.<sup>74</sup>

The Committee notes that despite the extensive litigation regarding ceded lands revenues, it does not appear that the deposit of ceded land revenues into and expenditure of the revenues under SLDF has ever been challenged. Audit Report No. 19-12 does not clearly explain why DLNR's practice of depositing the ceded lands revenues, after setting aside the amount owed to OHA, in SLDF and using those revenues as provided for under section 171-19, HRS, is wrong under the Admission Act of 1959, Hawaii State Constitution, or state law. The Report notes that several years ago, after setting aside the amount owed to OHA, the remaining portion of ceded land revenues was used to "supplement" the general fund to cover the shortfalls of other agencies' OHA payments.<sup>75</sup> However, after agencies started to regularly provide their payments to OHA, DLNR determined that the remaining portion should be deposited directly into SLDF and expended in accordance with section 171-19, HRS.<sup>76</sup>

The Report further suggests that depositing ceded lands revenues in SLDF and not the general fund is superseding the Legislature's power.<sup>77</sup> However, the Report does not acknowledge that the Legislature established SLDF to hold proceeds, rent, and monies of public lands, the definition of which includes ceded lands, and that the funds may only be used as authorized by the Legislature.<sup>78</sup> The Committee questions whether the Report is interpreting the phrase "subject to the Hawaiian Homes Commission Act, 1920, as amended, and section 5(f) of the Admission Act" under section 171-19, HRS, to mean that that ceded land revenues should go to the general fund rather than SLDF.<sup>79</sup>

Audit Report No. 19-12 also does not explain why it questions whether the uses of ceded land revenues under SLDF, including to fund DLNR, are consistent with the purposes for which the revenues may be used under the Admission Act of 1959.<sup>80</sup> The authorized uses of SLDF appear to be consistent with the purposes for which ceded land revenues can be used under the Admissions Act of 1959, particularly the provision of lands for public use.

The Report's discussion on ceded lands and DLNR seems to disregard the fact that DLNR is statutorily required to manage, administer, and exercise control over public lands, including

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<sup>74</sup> [HRS §171-19](#).

<sup>75</sup> [Audit Report No. 19-12, p. 38](#).

<sup>76</sup> [Audit Report No. 19-12, p. 38-39](#).

<sup>77</sup> [Audit Report No. 19-12, p. 39](#).

<sup>78</sup> [HRS §171-19](#); see [HRS §171-2](#).

<sup>79</sup> [HRS §171-19](#).

<sup>80</sup> [Audit Report No. 19-12, p. 39](#).

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ceded lands.<sup>81</sup> According to a BLNR member, the provision of lands for public use, as described under the Admission Act of 1959, is basically 90 percent of what DLNR does.<sup>82</sup> Presumably, expenditures to support the programs and purposes of Chapter 171, HRS, would in most if not all instances reasonably support one of the five ceded lands trust purposes.<sup>83</sup> The Committee also notes that according to DLNR, over 50 percent of the revenues in SLDF are from non-ceded lands, because not all public lands are ceded lands.<sup>84</sup> Therefore, even if some of the expenditures from SLDF are not for ceded land trust purposes, these expenditures could be paid for with non-ceded lands funds.

The Committee additionally finds that Audit Report 19-12 incorrectly assumes that OHA receives 20 percent of ceded land revenues pursuant to section 10-13.5, HRS.<sup>85</sup> Not only does Audit Report No. 19-12 use incorrect terminology when paraphrasing section 10-13.5, HRS,<sup>86</sup> it also completely disregards relevant case law that has impacted the application of that section and the public land trust.

Article XII, section 5, of the Hawaii State Constitution established OHA, which is required to "hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians."<sup>87</sup> OHA is governed by a Board of Trustees that exercises power as provided by law "to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians."<sup>88</sup> In 1980, the Legislature enacted section 10-13.5, HRS, to

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<sup>81</sup> [HRS §171-3](#); see [HRS §171-11](#) (some public lands are separately managed for specific purposes by different departments as determined by governor executive orders).

<sup>82</sup> [Testimony of BLNR Member Christopher Yuen on November 29, 2021](#).

<sup>83</sup> See [Day v. Apoliona](#), 616 F.3d 918, 924–25 (9th Cir. 2010) (so long as the ceded land revenues are used for "one or more" of the purposes enumerated under the Admission Act of 1959, "the manner in which the trust is managed is in Hawaii's sovereign control"); see also [Rice v. Cayetano](#), 528 U.S. 495, 508 (2000) (explaining that in the first decades following admission, the income from ceded lands "by and large flowed to the department of education").

<sup>84</sup> [Testimony of BLNR Chairperson Suzanne D. Case on September 14, 2021](#).

<sup>85</sup> [Audit Report No. 19-12](#), p. 37-39, 52.

<sup>86</sup> [Audit Report No. 19-12](#) uses the term "revenues" in reference to [section 10-13.5, HRS](#), however the correct term is "funds." [Act 304, SLH 1990](#), which amended section 10-13.5, HRS, to change the term "funds" to "revenue" and clarified that public land trust proceeds are to be expended by OHA for the betterment of the conditions of native Hawaiians, was invalidated by the Hawaii Supreme Court in 2001. [Office of Hawaiian Affairs v. State](#), 96 Hawai'i 388, 31 P.3d 901 (2001).

<sup>87</sup> [HI Const. art. XII, §5](#).

<sup>88</sup> [HI Const. art. XII, §6](#); see [HI Const. art. XII, §4](#).

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specifically require that “[t]wenty per cent of all funds derived from the public land trust” be expended by OHA for the purposes of Chapter 10, HRS, which includes the betterment of conditions of native Hawaiians.<sup>89</sup> It appears that Audit Report No. 19-12’s understanding of OHA’s share of ceded revenues ended with a plain reading of section 10-13.5, HRS. The Report failed to acknowledge that there have been considerable developments that impact the amount of ceded land revenues paid to OHA.

In 1987, the Hawaii Supreme Court held that a literal interpretation of section 10-13.5, HRS, “would be at odds with [other] legislative commitments.”<sup>90</sup> The Court did not determine OHA’s share of the public land trust income and proceeds—finding that it was a political issue for further legislative determination.<sup>91</sup> In response, the Legislature passed Act 304, SLH 1990, which defined the trust corpus and trust revenues from which OHA’s 20 percent share would derive.<sup>92</sup> Although Act 304, SLH 1990, settled whether certain categories of receipts would be subject to OHA’s pro rata share, there was dispute over other categories of trust revenue so OHA brought action against the State. In 2001, the Hawaii Supreme Court invalidated Act 304, SLH 1990, because it obligated the State to pay airport revenues to OHA, which conflicted with federal law.<sup>93</sup> Payments to OHA were suspended after the decision before being temporarily reinstated in 2003.

In 2006, the Legislature passed Act 178, SLH 2006, which appropriated \$17,500,000 to OHA as a one-time payment for previous underpayments of trust revenues and set OHA’s pro rata portion of the public land trust as \$15,100,000 annually until further action is taken by the Legislature.<sup>94</sup> Act 178, SLH 2006, also requires DLNR to cooperate with the Department of Budget and Finance and any other state department or agency that uses or manages public lands to provide an annual accounting of all receipts from lands described in section 5(f) of the Admission Act of 1959. That same year, Governor Linda Lingle issued Executive Order No. 06-06 to set up a mechanism to collect revenue for disbursement to OHA and allocate the collection across various agencies and departments. The provisions of Act 178, SLH 2006, and Executive Order No. 06-06 remain in effect today. To resolve and extinguish all claims, disputes, and controversies for back revenues from the date of OHA’s creation in 1978 through

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<sup>89</sup> [HRS §10-13.5](#); see [HRS §10-3](#).

<sup>90</sup> [Trustees of Office of Hawaiian Affairs v. Yamasaki](#), 69 Haw. 154, 175, 737 P.2d 446,458 (1987).

<sup>91</sup> [Id.](#); see [Office of Hawaiian Affairs v. State](#), 110 Hawai’i 338, 366, 133 P.3d 767, 795 (2006) (finding that “the legislative branch is vested with the authority to determine how the State satisfies its constitutional trust obligations”).

<sup>92</sup> [Act 304, SLH 1990](#).

<sup>93</sup> [Office of Hawaiian Affairs v. State](#), 96 Hawai’i 388, 31 P.3d 901 (2001).

<sup>94</sup> [Act 178, SLH 2006](#).

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June 30, 2012, the Legislature passed Act 15, SLH 2012, which conveyed property in Kakaako valued at approximately \$200,000,000 to OHA.<sup>95</sup>

Given the importance of the public land trust and ceded lands revenues, the Committee finds that there should be further inquiry into these longstanding concerns, and that DLNR's practice of depositing ceded land lease revenue in SLDF after setting aside the amount owed to OHA does not supersede the Legislature's authority insofar as the Legislature has the opportunity to explicitly direct how and where DLNR should place these ceded land revenues once DLNR has set aside the amount owed to OHA.

## **Recommendation**

The Committee recommends that there be additional inquiry into the public land trust and ceded land revenues by the appropriate House legislative committees.

## UNREPORTED ISSUES

### **Contracts, Grants, and Memoranda of Understanding**

#### **Commentary**

Act 209, SLH 2017, which required the Auditor to conduct an audit of SLDF, specifically required the Auditor to:

- (1) Review contracts, grants, and memoranda of understanding entered into, awarded by, or otherwise involving SLDF between the period beginning July 1, 2015, through June 30, 2017; and
- (2) Examine whether:
  - (A) The funds that were expended by DLNR were in compliance with laws and in accordance with the terms of the contracts, grants, and memoranda of understanding; and
  - (B) Contractors and awardees were adequately screened and qualified.<sup>96</sup>

To assist with this review and examination, the Office of the Auditor contracted with KKDLY, LLC to:

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<sup>95</sup> [Act 15, SLH 2012](#).

<sup>96</sup> [Act 209, SLH 2017](#).

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- (1) Prepare a schedule of expenditures by cost category, select vendors that were paid more than \$100,000 in aggregate, and review invoices to verify proper approval, procurement in compliance with procedures, and propriety of disbursements; and
- (2) For the International Union for Conservation of Nature (IUCN) expenditures using monies from SLDF, identify and report all funding sources, and review internal controls over the accounting and reporting of cash disbursements.<sup>97</sup>

Although Audit Report No. 19-12 discussed the IUCN expenditures and included summaries of IUCN expenses by natural classification and vendors paid more than \$100,000 in aggregate, the report did **not** similarly discuss or include a summary for all vendors that were paid more than \$100,000 in aggregate from SLDF.<sup>98</sup>

The Committee questioned why contracts, grants, and memoranda of understanding were not discussed in the audit. DLNR's Land Administrator testified before the Committee that he was surprised to learn in one of his initial meetings with Auditor Kondo that the scope of the audit was focused on RPs and not on contracts, procurement, and SLDF, pursuant to Act 209, SLH 2017.<sup>99</sup> According to the Land Administrator, the audit team disregarded the list of contracts, including appraisal contracts and planning contracts for Kanoelehua and East Kapolei, that the Land Administrator thought would be the subject of the audit (see [Appendix E "DLNR List of Contracts"](#)).<sup>100</sup> When asked about the scope going beyond what the Land Administrator thought the audit was supposed to be about, Auditor Kondo responded with something to the effect of "well, that's within my authority. It's my decision and I'm going to do what I want to do with the audit."<sup>101</sup>

The Legislature may want to follow up on whether the contracts, grants, and memoranda of understanding involving SLDF were reviewed and examined pursuant to Act 209, SLH 2017 (see [Appendix E "DLNR List of Contracts"](#)). According to the Office of the Auditor, KKDLY, LLC did not have any findings regarding the contracts, grants, and memoranda of understanding involving SLDF, so such findings were not included in Audit Report No. 19-12.<sup>102</sup> The Committee attempted to verify this information through a subpoena duces tecum to the Office of the Auditor, however, Auditor Kondo declined to produce this information as well as other

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<sup>97</sup> See [Audit Report No. 19-12, p. 45](#).

<sup>98</sup> [Audit Report No. 19-12](#).

<sup>99</sup> [Testimony of DLNR Land Administrator Russell Y. Tsuji on September 14, 2021](#).

<sup>100</sup> [Testimony of DLNR Land Administrator Russell Y. Tsuji on September 14, 2021](#).

<sup>101</sup> [Testimony of DLNR Land Administrator Russell Y. Tsuji on September 14, 2021](#).

<sup>102</sup> [Appendix D: Office of the Auditor Response to Draft Report, p. 64](#).

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information prepared by KKDLY, LLC as part of its financial audit of SLDF, citing working papers confidentiality (see "[Access to the Office of the Auditor's Working Papers](#)").

## **Recommendation**

The Committee recommends that the Legislature consider whether there needs to be further follow up on the review and examination of contracts, grants, and memoranda of understanding entered into, awarded by, or otherwise involving SLDF between the period beginning July 1, 2015, through June 30, 2017, since the Auditor did not focus on all these matters in Audit Report No. 19-12.

## **Forged Easement**

### **Commentary**

In response to one of the Committee's subpoena duces tecum, DLNR produced an audio recording of an October 19, 2018, interview conducted by the Office of the Auditor with the BLNR Chairperson. In that recording, one of the Auditor's analysts asked the BLNR Chairperson about a forged easement on Kauai. The Committee was surprised to learn about the existence of a forged easement because it was not reported to the Legislature or discussed in Audit Report No. 19-12.<sup>103</sup>

From the Committee's own documentary review and investigation into DLNR's internal investigation of the forged easement, the Committee learned that the forgery was discovered by the title company that found inconsistencies in title documents that raised questions.<sup>104</sup> When these questions were brought to the attention of DLNR staff and management, the Committee found that DLNR appeared to handle the matter appropriately by conducting its own internal investigation and referring the matter for criminal investigation and prosecution by the Department of the Attorney General.<sup>105</sup> The Attorney General's office conducted its own criminal investigation and ultimately prosecuted the individual responsible for the forged easement.

Based upon the documents provided by DLNR and the Department of the Attorney General, it appears the discovered forgery was handled appropriately and that the misconduct was limited to the one individual who is no longer employed by DLNR. What is concerning to this Committee, however, is that the Office of the Auditor did not follow up further on the forged

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<sup>103</sup> See [Audit Report No. 19-12](#).

<sup>104</sup> [Testimony of BLNR Chairperson Suzanne D. Case on October 20, 2021](#).

<sup>105</sup> [Testimony of BLNR Chairperson Suzanne D. Case on October 20, 2021](#).

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easement to determine for itself if DLNR responded appropriately and whether the proper controls and systems were in place to ensure that forgeries are not a problem within the DLNR.

According to the former Administrative Deputy Auditor, the audit team discovered the forged easement at some point during the fieldwork phase but did not further investigate the forged easement.<sup>106</sup> The former Administrative Deputy Auditor also testified that he and the audit team did not know that the forged easement was being prosecuted by the Attorney General.<sup>107</sup>

This lack of follow up by the Office of the Auditor was confirmed by evidence and testimony from the BLNR Chairperson.<sup>108</sup> During the October 19, 2018, interview, an analyst at the Office of the Auditor asked the BLNR Chairperson about the disposition of the forged easement but was not able to inquire into the resolution of any investigation by the Department, about whether there was a systemic problem at DLNR related to forged documents, or that the individual who forged the easement had been investigated and the matter properly handled. In testimony before the Committee on October 20, 2021, the BLNR Chairperson testified that after being asked once about the forged easement in the October 19, 2018, interview, there was no further inquiry or follow up about the forged easement by any member of the Office of the Auditor's team, including any follow up on whether the incident was part of a systemic problem with DLNR's land agents or what corrective actions, if any, DLNR had taken to ensure that the forging of documents was not a systemic problem.<sup>109</sup>

Unfortunately, while the Committee would like to have inquired more into why there was no follow up, the analysts who discovered the forged easement did not want to testify before the Committee in a public hearing to provide further clarity on the matter (see "[Witness Reluctance/Hesitancy and Influence](#)"). The former Administrative Deputy Auditor stated that Auditor Kondo made the final decision on whether to pursue further auditing and has the ultimate responsibility for the report.<sup>110</sup>

Also concerning is that this matter was not disclosed in any way in Audit Report No. 19-12.

Lastly, it was through this Committee's own investigation and inquiry that the Committee found that the forged easement is still part of the public record. The BLNR Chairperson testified that DLNR made a request to the Attorney General's office to start a process for

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<sup>106</sup> [Testimony of Former Administrative Deputy Auditor Ronald Shiigi on October 20, 2021.](#)

<sup>107</sup> [Testimony of Former Administrative Deputy Auditor Ronald Shiigi on October 20, 2021.](#)

<sup>108</sup> [Testimony of BLNR Chairperson Suzanne D. Case on October 20, 2021.](#)

<sup>109</sup> [Testimony of BLNR Chairperson Suzanne D. Case on October 20, 2021.](#)

<sup>110</sup> [Testimony of Former Administrative Deputy Auditor Ronald Shiigi on October 20, 2021.](#)

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expunging the forged easement from the public record at the Bureau of Conveyances.<sup>111</sup> However, it has been over five years since the forged easement was first discovered by DLNR.

## **Recommendation**

The Committee recommends that DLNR and the Attorney General complete their work to correct and remove the forged easement on Kauai.

## **Lessee Loss of Non-profit Status**

### **Commentary**

The former Administrative Deputy Auditor testified that during the audit of SLDF, he discovered that a DLNR lessee had lost its status as a non-profit organization by the Internal Revenue Service.<sup>112</sup> The former Administrative Deputy Auditor expressed concern to Auditor Kondo regarding the impact of the loss of non-profit status on the lessee's lease with DLNR and the amount of rent paid under the lease since non-profit entities generally receive rent discounts.<sup>113</sup> However, the matter was not pursued further because Auditor Kondo did not feel that it was a significant matter and it was not reported in Audit Report No. 19-12.<sup>114</sup>

In its response to the Committee's Draft Report, the Office of the Auditor identified the specific non-profit organization mentioned by the former Administrative Deputy Auditor as the Sand Island Business Association (SIBA) — the Land Division's largest revenue-generating lessee.<sup>115</sup> As pointed out by the Office of the Auditor and DLNR in their responses to the Committee's Draft Report, SIBA pays fair market rent so the loss of its non-profit status would not impact the amount of rent owed to the State.<sup>116</sup> For this reason, the Auditor found "[t]here was no need to report on this issue."<sup>117</sup> The Committee disagrees with this assessment and is concerned that if non-profit entities receive special considerations in lease negotiations, rent renewals, or any business transactions with DLNR due to their non-profit status, then loss of that non-profit status may have significant implications on the contractual relationships between DLNR and its lessees and the revenues generated on SLDF lands.

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<sup>111</sup> [Testimony of BLNR Chairperson Suzanne D. Case on October 20, 2021.](#)

<sup>112</sup> [Testimony of Former Administrative Deputy Auditor Ronald Shiigi on October 20, 2021.](#)

<sup>113</sup> [Testimony of Former Administrative Deputy Auditor Ronald Shiigi on October 20, 2021.](#)

<sup>114</sup> See [Audit Report No. 19-12.](#)

<sup>115</sup> [Appendix D: Office of the Auditor Response to Draft Report, p. 62.](#)

<sup>116</sup> [Appendix D: Office of the Auditor Response to Draft Report, p. 62; Appendix D: DLNR Response to Draft Report, p. 3.](#)

<sup>117</sup> [Appendix D: Office of the Auditor Response to Draft Report, p. 62.](#)



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Similar to the forged easement, the Committee is concerned about Auditor Kondo's decision not to follow up on information uncovered by the Office's trained analysts during their fieldwork or report that information to the Legislature or, in this case, DLNR. The Committee finds that DLNR should follow up on its non-profit lessees to ensure that they are maintaining their status and assess the impact that the loss of this status may have on DLNR's leases.

The Committee is also concerned that DLNR's relationship with non-profits may be putting the State at a disadvantage. Specifically, the Committee is worried that non-profit structures are being exploited and used for unintended purposes causing the State to lose out on potential revenue. The Committee considered recommending that DLNR focus on maximizing income on its income-generating properties to the greatest extent possible by charging all lessees on income-generating properties fair market rent and stopping its practice of giving preference or rent discounts to non-profits. However, the Committee recognizes that there may be a public purpose and need for rent discounts to non-profits. Rather than eliminating the preference or discount for non-profits, the Committee recommends that DLNR examine its practices surrounding non-profits. Should DLNR continue to provide discounts or preferential treatment for non-profits, it should discern whether the non-profit serves a public purpose that merits a discount or preferential treatment.

### **Recommendation**

The Committee recommends that DLNR follow up regarding the potential loss of non-profit status of its lessees and its impact on leases. The Committee also recommends that DLNR examine its practices surrounding non-profits, including its preference or discount for non-profits.

# CHAPTER 3: AGRIBUSINESS DEVELOPMENT CORPORATION

## Chapter 3: Agribusiness Development Corporation

### INTRODUCTION

Audit Report No. 21-01 made 28 recommendations for ADC and five recommendations for the ADC Board to address the following findings:

- (1) ADC has done little to fill the economic void created by the closure of the sugar and pineapple plantations;
- (2) ADC's land management struggles expose the State to unnecessary risk; and
- (3) The ADC Board provides minimal guidance and oversight to ADC.<sup>118</sup>

Audit Report No. 21-01 also notes in its Summary of Findings that ADC's financial records were not auditable.<sup>119</sup>

Following extensive inquiry, review of documents, and questioning of 12 witnesses related to ADC, the Committee made findings and recommendations related to updating ADC's authorizing statute, strategic planning efforts by ADC, greater oversight of ADC's Executive Director by the ADC Board, strengthening ADC's policies and procedures, and improving ADC's financial and accounting practices. The Committee also made findings and recommendations related to ADC's land and water management portfolio on Kauai that were largely omitted and ignored in Audit Report No. 21-01.

### AUTHORIZING LEGISLATION

#### **Refocusing, Updating, and Streamlining ADC's Authorizing Statute**

##### **Commentary**

ADC's enabling statute, Chapter 163D, HRS, places great emphasis on marketing and developing agricultural exports to replace sugar and pineapple. The Committee finds that Chapter 163D, HRS, needs to reflect the current realities of agriculture. For the past two centuries, Hawaii's agricultural industry has largely been driven by its anchor tenants, beginning with sugar and pineapple plantations in the 19<sup>th</sup> and 20<sup>th</sup> centuries and more recently with seed companies on ADC's lands in Kauai. However, similar to the exodus of

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<sup>118</sup> [Audit Report No. 21-01](#).

<sup>119</sup> [Audit Report No. 21-01, p. 4-5](#).

# CHAPTER 3: AGRIBUSINESS DEVELOPMENT CORPORATION

sugar and pineapple plantations, seed companies are starting to leave and/or reduce their footprint in Hawaii.

Given the change in social, political, and economic factors affecting agriculture in recent decades, ADC's authorizing statute is not well aligned with the current state of agriculture and state goals supporting local food production. The Committee recognizes that Hawaii's agricultural industry and its food crops are no longer just about export and large-scale, industrial farming. The Committee recommends that ADC's authorizing statute should be amended to support the achievement of local food self-sufficiency in a manner that is economically and environmentally sustainable while continuing to help develop and foster Hawaii's agricultural export economy.

Whenever feasible, the Committee also finds that ADC should collaborate with other agencies to achieve its purposes and assist its tenants. The Committee recommends that ADC's authorizing statute be amended to remove or modify functions that are performed by other agencies. For example, Chapter 163D, HRS, should deemphasize financing, marketing, data gathering, and analysis since these functions are performed by other agencies, such as the Department of Agriculture (DOA).<sup>120</sup> Instead, ADC should collaborate with DOA to provide these resources to its lessees and licensees. ADC should also work with the Department of Education as part of the Hawaii Farm to School Program and emphasize local production for local consumption.<sup>121</sup>

Audit Report No. 21-01 recommended that ADC "[u]pdate and revise its mission statement to reflect the corporation's purpose more completely as intended by the Legislature to address, among other things, facilitating the development of Hawai'i-based agricultural enterprises and strategies to promote, market, and distribute Hawai'i-grown agricultural crops and value-added products in local, national, and international markets."<sup>122</sup> The Committee agrees in part with this recommendation that ADC should "facilitat[e] the development of Hawaii-based agricultural enterprises" by also prioritizing and entering into lease agreements designed to increase the production of local agriculture products and supporting small farmers. The Committee does not believe that ADC's mission statement or resources should be focused on promotion and marketing strategies because DOA already performs these promotion and marketing functions. Instead, ADC and DOA should collaborate on promotion and marketing functions, with DOA taking the primary lead on developing strategies to promote, market, and distribute Hawaii-grown agricultural crops and value-added products in local, national, and international markets as recommended by the Auditor.

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<sup>120</sup> See [Appendix C: ADC Closing Statement, p. 8](#).

<sup>121</sup> HRS §§[302A-405.5](#) and [302A-405.6](#).

<sup>122</sup> [Audit Report No. 21-01, p. 35](#).

# CHAPTER 3: AGRIBUSINESS DEVELOPMENT CORPORATION

On August 25, 2021, the ADC Board voted to keep ADC's current mission statement, which is to "acquire and manage, in partnership with farmers, ranchers, and aquaculture groups, selected arable lands, water systems and infrastructure for commercial agricultural use, and to direct research into areas that will lead to the development of new crops, markets, and lower production costs."<sup>123</sup> The Committee recommends that ADC update its mission statement to incorporate any changes to its authorizing statute that the Legislature may enact based on this Committee's recommendations. Every five years thereafter, this Committee recommends that ADC review its mission statement to ensure that it does not become outdated.

## Recommendation

The Committee recommends amending Chapter 163D, HRS, to refocus, update, and streamline ADC's authorizing statute to reflect the current state of farming and focus on Hawaii's needs for local agricultural products in addition to export products. Specifically, the Committee recommends:

- (1) Having ADC prioritize entering into lease agreements designed to increase the production of local agricultural products for local consumption and supporting small farmers, while continuing to focus on commercial exports;
- (2) Aligning plans and projects with recently set goals for the purchasing of local agriculture products for local consumption;
- (3) Making various changes throughout Chapter 163D, HRS, to deemphasize marketing and emphasize production for local consumption; and
- (4) Amending ADC's powers, duties, and responsibilities to repeal functions performed by other agencies.

The Committee also recommends that ADC coordinate and administer programs to increase local production of agricultural products for local consumption, reduce the State's reliance on imported agricultural products, and increase access to farmland and related infrastructure for local farmers and cooperatives.

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<sup>123</sup> [Minutes of the ADC Board Meeting Held Virtually on August 25, 2021](#). The Committee notes that [ADC's website](#) includes a different mission statement ("The mission of the Agribusiness Development Corporation (ADC) is to provide leadership and advocacy for the conversion of agribusiness into a dynamic growth industry through the use of financial and other tools enabled by the founding legislation for the pursuit of specific projects to achieve the legislative objectives").

# CHAPTER 3: AGRIBUSINESS DEVELOPMENT CORPORATION

The Committee recommends that ADC update its mission statement based on these changes every five years thereafter.

## Planning

### Commentary

#### Current Planning

Section 163D-5, HRS, requires ADC to prepare the Hawaii Agribusiness Plan that defines and establishes goals, objectives, policies, and priority guidelines for its agribusiness development strategy.<sup>124</sup> Audit Report No. 21-01 found that ADC had not developed the Hawaii Agribusiness Plan and had no agricultural development plans for any of its projects as required by Chapter 163D, HRS.<sup>125</sup> As a result, the Report criticized ADC's land acquisitions as being driven by legislative directives and corresponding appropriations and not ADC strategy.<sup>126</sup>

The Committee recognizes that ADC subsequently submitted a Hawaii Agribusiness Plan 2021 to the ADC Board in December 2020.<sup>127</sup> ADC indicated that it will update the plan and review its progress annually. The Committee also recognizes that ADC has plans for large portions of its portfolio, including certain regions and projects like the Whitmore Food Hub, and that the Kekaha Agriculture Association has its own planning efforts.

Although the Hawaii Agribusiness Plan 2021 is a good start, the Committee agrees with statements from members of the ADC Board that the plan should include metrics, timeframes, and budgetary expectations.<sup>128</sup> The Committee supports the planning efforts of the current ADC Board.

#### Auditor Recommendations and Statutory Amendments

The Committee partially agrees with the Auditor's recommendations that ADC:

- (1) Prepare, and revise as required, the Hawaii Agribusiness Plan; and

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<sup>124</sup> [HRS § 163D-5](#).

<sup>125</sup> [Audit Report No. 21-01, p. 2](#).

<sup>126</sup> [Audit Report No. 21-01, p. 29-30](#).

<sup>127</sup> See [Appendix F: Hawaii Agribusiness Plan 2021 \(December 2020\); Audit Report No. 21-01, p. 32](#).

<sup>128</sup> [Testimony of ADC Board Ex-Officio Members M. Kaleo L. Manuel and Mary Alice Evans on November 17, 2021](#).

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- (2) Prepare short- and long-range strategic plans to facilitate development of Hawaii-based agricultural enterprises to grow and export agricultural crops and value-added products.<sup>129</sup>

The Committee finds that ADC should be collaborating with DOA on its planning efforts. DOA should lead the industry and be involved with larger planning for the entire agriculture industry.

The Committee also finds that ADC's Hawaii Agribusiness Plan and short- and long-range strategic plans should focus on ADC and its tenants and surrounding properties. ADC should not be responsible for preparing a Hawaii Agribusiness Plan for the state agriculture industry as a whole. Statutory language requiring the Hawaii Agribusiness Plan should be refocused on planning for ADC and functions performed by other state agencies should not be required of ADC.

Section 163D-5(a), HRS, currently requires the Hawaii Agribusiness Plan to include:

- (1) An inventory of agricultural lands with suitable adequate water resources that are or will become available due to the downsizing of the sugar and pineapple industries that can be used to meet present and future agricultural production needs;
- (2) An inventory of agricultural infrastructure that will be abandoned by sugar and pineapple industries such as irrigation systems, drainage systems, processing facilities, and other accessory facilities;
- (3) An analysis of imported agricultural products and the potential for increasing local production to replace imported products in a manner that complements existing local producers and increases Hawaii's agricultural self-sufficiency;
- (4) Alternatives in the establishment of sound financial programs to promote the development of diversified agriculture;
- (5) Feasible strategies for the promotion, marketing, and distribution of Hawaii agricultural products in local, national, and international markets;
- (6) Programs to promote and facilitate the absorbing of displaced agricultural workers into alternative agricultural enterprises;

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<sup>129</sup> [Audit Report No. 21-01, p. 36.](#)

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- (7) Strategies to insure the provision of adequate air and surface transportation services and supporting facilities to support the agricultural industry in meeting local, national, and international market needs;
- (8) Proposals to improve the gathering of data and the timely presentation of information on market demands and trends that can be used to plan future harvests and production; and
- (9) Strategies for federal and state legislative actions that will promote the development and enhancement of Hawaii's agricultural industries.<sup>130</sup>

Audit Report No. 21-01 made several recommendations based on the requirements of the Hawaii Agribusiness Plan under section 163D-5, HRS.<sup>131</sup> The Committee agrees or partially agrees with some of these recommendations, but there are several the Committee disagrees with since the functions would be duplicative.

Although the Committee agrees in part with the Auditor's recommendation that ADC develop inventories of agricultural lands with adequate water resources or agricultural infrastructure pursuant to section 163D-5(a)(1) and (2), HRS, the Committee finds that this task is too broad in scope for ADC to undertake by itself.<sup>132</sup> Instead of focusing on sugar and pineapple industries, the scope of the inventories should be focused on inventory of agricultural lands within the purview of ADC that are or will become available for any reason and available agricultural infrastructure that are controlled by ADC.

The Committee also finds that section 163D-5(a)(3), HRS, should be amended to address ADC's new focus. Since the analysis of imported agricultural products is already performed by DOA, the Committee finds that this requirement should be repealed and that the Hawaii Agribusiness Plan should instead include an analysis and plan for how agricultural lands within the purview of ADC can be used to increase local production to replace imported products in a manner that complements existing local producers and increases Hawaii's agricultural self-sufficiency.<sup>133</sup> DOA should however work with the Legislature to increase its analysis of imported agricultural products.

Rather than develop strategies for federal and state legislative actions that will promote the development and enhancement of Hawaii's agricultural industries, as required under section 163D-5(a)(9), HRS, the Committee finds that ADC should develop strategies more broadly for

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<sup>130</sup> [HRS §163D-5](#).

<sup>131</sup> [Audit Report No. 21-01, p. 35-36](#).

<sup>132</sup> See [Audit Report No. 21-01, p. 35](#); [HRS §163D-5\(a\)\(1\) and \(2\)](#).

<sup>133</sup> See [Audit Report No. 21-01, p. 35](#); [HRS §163D-5\(a\)\(3\)](#).

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federal, state, county, and community stakeholder actions that will promote the development and enhancement of Hawaii's agricultural industries.<sup>134</sup>

The Committee finds all other required portions of the Hawaii Agribusiness Plan under section 163D-5(a)(4)-(8), HRS, duplicative of functions performed by other agencies.<sup>135</sup> As such, it would be and is a waste of resources to recreate these functions in ADC. Therefore, the Committee disagrees with recommendations five through nine under Audit Report No. 21-01 and recommends that the duplicative requirements for the Hawaii Agribusiness Plan be repealed.<sup>136</sup>

The Committee agrees with the Auditor's recommendation that ADC prepare or coordinate the preparation of business and agricultural development plans, as provided by section 163D-7, HRS, for each project.<sup>137</sup>

The Committee also agrees with the Auditor's recommendation that ADC submit a report of its plans and activities to the Legislature and Governor 20 days before each legislative session, as required by section 163D-19, HRS.<sup>138</sup> According to Audit Report No. 21-01, the Executive Director submitted only three annual reports since 2012.<sup>139</sup> The Committee stresses the importance of annual reports, which legislators read and rely upon when determining policy. Although ADC notes that its annual accomplishments have been included in DOA's annual report to the Legislature,<sup>140</sup> ADC should ensure that it submits its own annual report in compliance with section 163D-19, HRS.<sup>141</sup>

## Planning Facilitation

As indicated by a member of the ADC Board, strategic planning is an ongoing process.<sup>142</sup> Yet, ADC does not have a planner. The Committee partially agrees with the Auditor's recommendation for ADC to "[e]valuate retaining consultants and other outside technical

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<sup>134</sup> See [Audit Report No. 21-01, p. 36](#); [HRS §163D-5\(a\)\(9\)](#).

<sup>135</sup> See [HRS §163D-5\(a\)\(4\)-\(8\)](#).

<sup>136</sup> [Audit Report No. 21-01, p. 35-36](#).

<sup>137</sup> [Audit Report No. 21-01, p. 36](#) (Recommendation 13 indicates that section 163D-7, HRS, requires these actions, however, the statute merely authorizes ADC to "initiate and coordinate the preparation of business and agricultural development plans for its projects"); see [HRS §163D-7](#).

<sup>138</sup> [Audit Report No. 21-01, p. 36](#); see [HRS §163D-19](#).

<sup>139</sup> [Audit Report No. 21-01, p. 30](#).

<sup>140</sup> [Appendix D: ADC Response to Draft Report, p. 3](#).

<sup>141</sup> [HRS §163D-19](#).

<sup>142</sup> [Testimony of ADC Board Ex-Officio Members M. Kaleo L. Manuel and Mary Alice Evans on November 17, 2021](#).



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assistance to develop a current Hawai'i Agribusiness Plan, short- and long-term strategic plans, business and agricultural development plans, and other tasks necessary to carry out the purposes of Chapter 163D, HRS."<sup>143</sup> The Committee finds that ADC should coordinate its planning efforts with DOA. DOA is a large agency with greater resources to assist in planning efforts. To the extent possible, DOA and ADC should also work with the Office of Planning and Sustainable Development, which provides statewide planning assistance. However, the Committee understands that neither the Office of Planning and Sustainable Development nor ADC currently have the extra capacity to take on ADC's current planning efforts. Therefore, the Committee finds that the Legislature should at least provide a one-time appropriation of \$100,000 for a consultant to assist in preparing and finalizing the Hawaii Agribusiness Plan, including the facilitation of community stakeholder involvement, which is critical in any planning process.

## **Recommendation**

The Committee recommends that by July 1, 2024, ADC, in coordination with DOA, prepare and post on its website, a Hawaii Agribusiness Plan that is specific to ADC and its focus. The Plan should specifically include:

- (1) An inventory of agricultural lands within the purview of ADC with suitable adequate water resources that are or will become available and can be used to meet present and future agricultural production needs;
- (2) An inventory of available agricultural infrastructure such as irrigation systems, drainage systems, processing facilities, and other accessory facilities that are controlled by ADC;
- (3) An analysis and plan for how these lands can be used to increase local production to replace imported products in a manner that complements existing local producers and increases Hawaii's agricultural self-sufficiency; and
- (4) Strategies for federal, state, county, and community stakeholder actions that will promote the development and enhancement of Hawaii's agricultural industries.

The Committee further recommends that ADC, in coordination with DOA, update the Hawaii Agribusiness Plan every five years thereafter.

All other statutory requirements for the Hawaii Agribusiness Plan should be repealed since these functions are currently performed by other agencies. However, the Committee

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<sup>143</sup> [Audit Report No. 21-01, p. 36.](#)

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recommends that DOA work with the Legislature to increase its analysis of imported agricultural products.

The Committee agrees with the Auditor's recommendation that ADC "develop goals, objectives, policies, and priority guidelines that articulate and outline an agribusiness development strategy." The Committee further recommends that the goals developed for ADC's agribusiness development strategy include specific one-, five-, and ten-year objectives and measurable outcomes. These objectives and measurable outcomes should have annual performance goals and measures upon which ADC can be evaluated annually to determine whether it is on track to meet the objectives and measurable outcomes. The Hawaii Agribusiness Plan should also include metrics, timeframes, and budget expectations as part of ADC's agribusiness development strategy.

To assist ADC and DOA with preparing the Hawaii Agribusiness Plan, the Committee recommends that by July 1, 2022, ADC work with the Office of Planning and Sustainable Development or a consultant to draft a final plan. The Committee recommends that the Legislature appropriate \$100,000 for a consultant to assist in preparing and finalizing the Hawaii Agribusiness Plan, including the facilitation of community stakeholder involvement.

The Committee further recommends that ADC, in coordination with DOA, develop short- and long-range plans to help ADC tenants and surrounding properties. ADC should also prepare or coordinate the preparation of business and agricultural development plans, as provided by section 163D-7, HRS, for each project.

In general, DOA and ADC should work with the Office of Planning and Sustainable Development, or evaluate retaining consultants and other outside technical assistance, if necessary, to develop the Hawaii Agribusiness Plan, short- and long-term strategic plans, business and agricultural development plans, and other tasks necessary to carry out the purposes of Chapter 163D, HRS.

The Committee also recommends that ADC submit a report of its plans and activities to the Legislature and Governor 20 days before each legislative session, as required by section 163D-19, HRS.

## **Executive Director, Staff, and ADC Board**

### **Commentary**

There has been a lack of alignment between past ADC Board leadership, executive, and legislative direction and the direction adopted by the ADC Executive Director, in some large part because ADC board members are primarily oriented toward business and are less

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knowledgeable about farming,<sup>144</sup> are overly deferential to the Executive Director, and have not provided sufficient oversight, regulation, and direction.

The Committee agrees with the Auditor's recommendations that the ADC Board and ADC develop and document annual goals and measures for the Executive Director and each staff and evaluate these individuals at least annually and document the evaluations.<sup>145</sup>

The Committee also agrees with the Auditor's recommendation for the ADC Board to document the specific authority delegated to the Executive Director, including, but not limited to, the types of access and use of ADC property the Executive Director can approve without notice to or approval by the Board; and the rent credits and other amendments to Board-approved contract terms the Executive Director can approve without notice to or approval by the Board.<sup>146</sup>

The Committee recognizes that implementation of these recommendations by the ADC Board and ADC is ongoing and that the Board and ADC are engaging in the process in a meaningful way. Members of the ADC Board testified that the Executive Director is evaluated annually by a Permitted Interaction Group of the Board using metrics based on the Executive Director's job description and ADC's authorizing statute.<sup>147</sup> ADC testified that it uses a system to evaluate the performance of new hires and that it is working on a process for evaluating all staff.<sup>148</sup> In its closing statement to the Committee, ADC indicated that the ADC Board's delegation to the Executive Director of the authority to issue rights of entry is legitimate and not a lack of oversight by the Board and that the Board is currently vetting policies on credits and other recurring requests from tenants through its policy committee.<sup>149</sup> The Committee continues to support this process by ADC and recommends codifying the requirement of annual performance evaluations of the Executive Director by the ADC Board.

The Committee wants to ensure that ADC is managed by board members with knowledge and experience of local agricultural production and sustainable forms of food production. The Committee recommends amending the membership of the ADC Board by adding two additional members to be appointed by the Governor, and designating that at least three

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<sup>144</sup> Although the new ADC Board Chairperson overcomes this objection, he has indicated that he may serve a short term. See [Testimony of ADC Board Chairperson Frederick Lau on November 18, 2021](#).

<sup>145</sup> [Audit Report No. 21-01, p. 38-39](#).

<sup>146</sup> [Audit Report No. 21-01, p. 39-40](#).

<sup>147</sup> [Testimony of ADC Board Ex-Officio Members M. Kaleo L. Manuel and Mary Alice Evans on November 17, 2021](#).

<sup>148</sup> [Testimony of ADC on September 21, 2021](#).

<sup>149</sup> [Appendix C: ADC Closing Statement, p. 7](#).

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members have substantial experience in local food production, at least one member has substantial experience in organic and natural farming practices, and at least one member has demonstrated expertise in Native Hawaiian traditional and customary agricultural practices. To ensure Board members have broad knowledge and experience with local agricultural production, the Committee recommends that the Governor consult with appropriate government and community agricultural stakeholders, such as the Office of Hawaiian Affairs, University of Hawaii West Oahu Sustainable Community Food Systems Program, Hawaii Farm Bureau, Hawaii Farmers Union United, Hawaii Organic Farmers Association, Hawaii Crop Improvement Association, and Hawaii Cattlemen's Council, when appointing members.

The Committee also agrees with the Auditor's recommendation that ADC fill vacant staff positions with qualified persons in a timely manner.<sup>150</sup> Audit Report No. 21-01 found that the ADC Board was performing tasks that should be handled by ADC staff.<sup>151</sup> When vacancies arise, ADC should work on filling those vacant positions promptly to allow the ADC Board to focus on its responsibilities. As of August 5, 2021, ADC reports that all its funded positions are fully staffed.<sup>152</sup> ADC currently has one unfunded asset manager position. The Committee finds that ADC should fund this asset manager position and add an accountant position to manage ADC's financial records.

## **Recommendation**

The Committee recommends that the ADC Board be required to and continue its efforts to annually conduct performance evaluations of the Executive Director and staff and clarify the delegation of ADC Board authority to the Executive Director.

The Committee also recommends that ADC fill vacant staff positions with qualified persons in a timely manner. To help ADC fill its vacant asset manager position, the Committee recommends that the position be funded.

Lastly, the Committee recommends amending the membership of the ADC Board by:

- (1) Adding two additional members to be appointed by the Governor;
- (2) Requiring that at least:
  - (A) Three board members have substantial experience in local food production;

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<sup>150</sup> [Audit Report No. 21-01, p. 38.](#)

<sup>151</sup> [Audit Report No. 21-01, p. 44.](#)

<sup>152</sup> [Appendix C: ADC Closing Statement, p. 6.](#)

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- (B) One board member has substantial experience in organic and natural farming practices; and
  - (C) One board member has demonstrated expertise in Native Hawaiian traditional and customary agricultural practices; and
- (3) Requiring the Governor to consult with appropriate government and community agricultural stakeholders, such as the Office of Hawaiian Affairs, University of Hawaii West Oahu Sustainable Community Food Systems Program, Hawaii Farm Bureau, Hawaii Farmers Union United, Hawaii Organic Farmers Association, Hawaii Crop Improvement Association, and Hawaii Cattlemen's Council, when appointing board members.

## POLICIES AND PROCEDURES

### Written Policies and Procedures

#### Commentary

The Committee finds that ADC would benefit from establishing robust and detailed written policies and procedures. ADC's current Land Management Policies and Guidelines, last updated in 2009, are inadequate to properly manage the assets for which ADC is responsible.<sup>153</sup> The four-page document only provides general guidance, with specific sections on acreage assignments, rents and other terms, and tenant selection criteria. The Committee agrees with Audit Report No. 21-01's recommendation for ADC to develop written policies and procedures regarding ADC board oversight, land and other ADC-owned property disposition application processes, property management, and file and document management.<sup>154</sup>

However, the Committee disagrees with Audit Report No. 21-01's recommendation for ADC to promulgate administrative rules.<sup>155</sup> Although ADC has been authorized to adopt administrative rules under Chapter 91, HRS, since it was established in 1994, it has not exercised this authority.<sup>156</sup> ADC has explicitly rejected establishing rigid administrative rules and

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<sup>153</sup> [Appendix G: ADC Land Management Policies and Guidelines \(2009 Revision\)](#); [Audit Report No. 21-01, p. 4](#).

<sup>154</sup> [Audit Report No. 21-01, p. 36-37](#).

<sup>155</sup> [Audit Report No. 21-01, p. 38](#).

<sup>156</sup> See [HRS §163D-4](#) (authorizing ADC to "[a]dopt rules under chapter 91 necessary to effectuate [Chapter 163D, HRS] in connection with its projects, operations, and properties"); [HRS §163D-8](#) (authorizing ADC to adopt rules pursuant to Chapter 91, unless and except as

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procedures in the past<sup>157</sup> and questioned whether it should establish administrative rules pursuant to recommendation 22 in Audit Report No. 21-01 since it would diminish ADC's flexibility, inhibit innovation, and further delay its processes.<sup>158</sup> Rather than adopt administrative rules as suggested in Audit Report No. 21-01, the Committee recommends that ADC be required to draft and publish its written policies and procedures by January 1, 2023, to address the topics discussed under Recommendation 22 of Audit Report No. 21-01.

In addition to the subject areas discussed under recommendations 18 and 22 of Audit Report No. 21-01, ADC's policies and procedures should address BOA approval of ADC's agricultural projects, agricultural development plans, and project facility programs.<sup>159</sup> Audit Report No. 21-01 specifically recommended that ADC:

- (1) Obtain and document approval by BOA for agricultural projects, agricultural development plans, and project facility programs, before implementation, as required by section 163D-8.5, HRS; and
- (2) Obtain from BOA its policies and procedures for approval of ADC's projects under section 163D-8.5, HRS, including any delegations of authority.<sup>160</sup>

Section 163D-8.5, HRS, requires all agricultural projects, agricultural development plans, and project facility programs developed by ADC to be approved by BOA before implementation.<sup>161</sup> For over the past decade, ADC has been relying on BOA's 2008 delegation of authority to the BOA Chairperson to approve ADC projects, plans, and programs.<sup>162</sup> The Committee finds this practice acceptable and notes that it is standard across other boards. Section 26-16, HRS, specifically authorizes BOA to delegate to the Chairperson "such duties, powers, and authority, or so much thereof, as may be lawful or proper for the performance of the functions vested in the board."<sup>163</sup> Three BOA members,

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otherwise provided by law, "to establish the method of undertaking and financing project facilities in a project area").

<sup>157</sup> See [Appendix G: ADC Land Management Policies and Guidelines \(2009 Revision\)](#), p. 1 (stating that it would be premature for ADC to establish rigid administrative rules and procedures at that time because ADC was "still in the process of developing models to handle agricultural lands and infrastructure").

<sup>158</sup> [Testimony of ADC on September 21, 2021](#).

<sup>159</sup> [Audit Report No. 21-01, p. 36](#).

<sup>160</sup> [Audit Report No. 21-01, p. 36](#).

<sup>161</sup> [HRS § 163D-8.5](#).

<sup>162</sup> [Minutes of the Board of Agriculture on February 26, 2008](#).

<sup>163</sup> [HRS § 26-16](#).

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including the BOA Chairperson, sit on the ADC Board and can question, discuss, deliberate, and vote when the ADC Board votes on projects, plans, and programs.

The Committee also notes that in its review of the minutes of BOA meetings, BOA was apprised of and approved significant ADC plans and projects.<sup>164</sup> This signals to the Committee that the current delegation and communication process is working. Rather than recommending that ADC obtain approval from BOA for all projects, plans, and programs or that BOA regularly redelegate its approval authority to the BOA Chairperson, the Committee recommends that ADC should establish policies and procedures for when ADC must obtain affirmative approval from BOA for agricultural projects, agricultural development plans, and project facility programs involving substantive matters or matters of public concern.

Audit Report No. 21-01 also recommended that ADC “[o]btain an opinion from the State Procurement Office as to whether the corporation’s practice of offering negotiated rent credits to tenants and prospective tenants in exchange for services in common areas, unoccupied properties, or properties occupied by other tenants, such as road and reservoir construction, and/or materials is permitted under the Hawai’i Procurement Code.”<sup>165</sup> ADC views it as a contract term which commercial lessees understand as tenant improvements.

The Committee disagrees with the Auditor’s recommendation and finds that ADC should address the issue of rent credits and tenant improvements through its written policies and procedures. The Committee views rent credits as a valuable tool, especially when ADC does not have the adequate resources to administer or pay for the improvements. The Committee recognizes that the ADC Board has created a new policy committee that will be able to incorporate comments and concerns gleaned from the public, this Committee, and Audit Report No. 21-01, including policies on credits and other recurring requests from tenants.<sup>166</sup> ADC’s written policies and procedures should provide the ADC Board and employees with a

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<sup>164</sup> See [BOA, Minutes of BOA October 25, 2001 Meeting \(Approved December 13, 2001\)](#) (approval of request for (1) Master leases from DLNR to the Department of Hawaiian Home Lands for Kekaha Agricultural Lands; (2) RP from DLNR for water use and system management for irrigation systems serving kekaha agricultural lands; and (3) Right of entry from DLNR for management and site control, as necessary); [BOA, Minutes of BOA February 26, 2008 Meeting](#) (delegation of BOA authority to BOA Chair to approve ADC projects); [BOA, Minutes of the BOA November 24, 2009 Meeting](#) (update on ADC Projects including Kekaha, Waiahole, and others); [BOA, Minutes of the BOA May 24, 2011 Meeting](#) (overview of ADC projects at Kalepa and Kekaha, including site visit); [BOA, Minutes of the BOA March 25, 2014 Meeting](#) (approval of the Whitmore Project); and [BOA, Minutes of the BOA May 27, 2014 Meeting](#) (presentation on updates of new agricultural activities at Kekaha and awarding of RPs and land licenses in Kalepa).

<sup>165</sup> [Audit Report No. 21-01, p. 38.](#)

<sup>166</sup> [Appendix C: ADC Closing Statement, p. 6-7.](#)

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better framework to follow and ensure transparency and accountability in the conduct of ADC. The written policies and procedures should be subject to approval by the ADC Board in a meeting open to the public.

The Committee recognizes the importance of community engagement in state government processes to build community trust. The use of interactive conference technology in remote hearings during the COVID-19 pandemic has enabled greater community stakeholder engagement, particularly for rural or neighbor island communities.<sup>167</sup> The Committee recommends that ADC be required to conduct ADC Board meetings with hybrid in-person and virtual participation allowed. The Committee recognizes that continuing this practice may require additional funds from the Legislature. Therefore, the Committee also recommends that the Legislature appropriate sufficient funds to enable virtual and remote participation in Board meetings.

## **Recommendation**

The Committee recommends that by July 1, 2023, ADC develop robust and detailed written policies and procedures on ADC board oversight, land and other ADC-owned property disposition application processes, property management, and file and document management in accordance with recommendation 18 under Audit Report No. 21-01.

These robust and detailed written policies and procedures should also address:

- (1) The application process for the use of ADC's lands and other assets, including its process for evaluating applications;
- (2) ADC's administration and enforcement of the terms and conditions of licenses, permits, rights of entry, and other conveyance instruments, including those relating to inspections, notices of default, termination, eviction, and appeal rights;
- (3) Criteria and other procedures to create subsidiaries;
- (4) Criteria and other procedures for any coventure in qualified securities of an agricultural enterprise and to make direct investment in an agricultural enterprise;
- (5) Criteria and other procedures to exercise ADC's right of withdrawal from licenses, permits, and rights of entry;



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- (6) When ADC must obtain affirmative approval from the Board of Agriculture (BOA) for agricultural projects, agricultural development plans, and project facility programs involving substantive matters or matters of public concern; and
- (7) Criteria and other procedures to apply and qualify for rent credits.

ADC should maintain, periodically update, and post on its website these written policies and procedures.

To foster community trust and engagement, the Committee recommends that ADC be required to hold its Board meetings with hybrid in-person and virtual participation allowed. The Committee further recommends that the Legislature appropriate sufficient funds to enable virtual and remote participation in Board meetings.

## **Electronic Database and Filing System**

### **Commentary**

The Committee agrees with the Auditor's recommendation for ADC to create:

- (1) An electronic database system that includes an inventory of ADC's lands, improvements, and other assets; and
- (2) A filing system (or electronic document management system) that maintains documents in an organized manner and allows for the efficient retrieval of documents and/or files.<sup>168</sup>

As mentioned in Audit Report No. 21-01, ADC's prior secretary was responsible for the filing and document management system at ADC.<sup>169</sup> Currently, all staff are responsible for scanning and saving soft files, and the secretary is responsible for filing all hard copies. ADC reported to the Committee that it recently selected a vendor and sent a request to the Governor to approve the procurement of a land/documents management platform and consultant to assist ADC with implementing an electronic database and filing system.<sup>170</sup> ADC's Property Management System will be developed by Yardi Systems, which also developed DLNR's new Voyager system. ADC expects the system to be geared towards a

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<sup>168</sup> [Audit Report No. 21-01, p. 37-38.](#)

<sup>169</sup> [Audit Report No. 21-01, p. 18.](#)

<sup>170</sup> [Solicitation No. B22000494, Property Management Software, HlePro State of Hawaii eProcurement.](#)

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smaller entity such as ADC and will assist ADC with its land management activities and accounting.<sup>171</sup>

## **Recommendation**

The Committee recommends that ADC create:

- (1) An electronic database system that includes an inventory of ADC's lands, improvements, and other assets. The database should include all information reasonably necessary to manage those assets, such as the material terms of licenses, permits, rights of entry, and other agreements to use or occupy ADC assets; and should allow ADC to generate reports necessary for management of its assets, such as current tenant lists, vacancy rates, rent rolls, rent reopening dates, and license, permit, or right of entry termination dates; and
- (2) A filing system (or electronic document management system) that maintains documents in an organized manner and allows for the efficient retrieval of documents and/or files.

## **Standardized Lease or License Template**

### **Commentary**

The Committee finds that ADC's leases and licenses do not include provisions on land remediation to ensure that lands revert to ADC in farmable condition. It is important to protect the State from absorbing the costs of land remediation when a tenant vacates or terminates the lease.

ADC testified that it has already spoken with some of its bigger tenants on Kauai that have licenses expiring soon about remediation.<sup>172</sup> The Committee recognizes that it may be challenging for ADC to introduce remediation clauses into its licenses because it may not have soil baseline studies from when the land was originally leased to the tenant. Moving forward, ADC should conduct soil baseline studies before leasing or licensing land and require an Environmental Site Assessment with soil samples before lease or license termination to ensure that the tenant remediates the soil back to its original condition.

## **Recommendation**

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<sup>171</sup> [Testimony of ADC on September 21, 2021.](#)

<sup>172</sup> [Testimony of ADC on October 21, 2021.](#)

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The Committee recommends that ADC develop a standardized lease or license template that includes provisions to address environmental issues in the event environmental mitigation is needed. Specifically, the Committee recommends requiring ADC to test the soils of all its lands and lessees and licensees to remediate soil before vacating ADC lands or terminating the lease.

## Property Management

### Commentary

The Committee partially agrees with the recommendation in Audit Report No. 21-01 that ADC “[e]valuate the retention of a private property management company to manage some or all of ADC’s properties.”<sup>173</sup> ADC indicated that prior attempts to hire a private property manager were denied approval as violative of civil service laws and collective bargaining provisions.<sup>174</sup> However, ADC has been granted approval to contract with a Kekaha consultant for the very specific and limited purpose of assisting with the operation and maintenance of the pumps that drain water from the Mana plain to the Pacific Ocean.

According to ADC, it currently has one property manager who is responsible for over 20,000 acres of land on the islands of Oahu, Kauai, and Hawaii. The property manager is required to:

- (1) Manage all of ADC’s leases, licenses, RPs, and water user agreements, including enforcement of terms and conditions;
- (2) Conduct routine inspections of all properties;
- (3) Visit Kauai at no less than a quarterly basis, for at least two days at a time;
- (4) Prepare all written submissions and recommendations to the ADC Board and present the recommendations to the ADC Board at duly noticed meetings;
- (5) Respond to emergency calls, as needed;
- (6) Oversee all trespassing instances and removal of abandoned vehicles and trash, such as medical waste products; and
- (7) Work closely with the Honolulu Police Department to ensure the best surveillance and enforcement.

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<sup>173</sup> [Audit Report No. 21-01, p. 38.](#)

<sup>174</sup> ADC tried to find a management company for its properties on Kauai since ADC does not have a physical presence on Kauai.

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The Committee heard extensive testimony about the agricultural cooperatives comprised of ADC tenants on Kauai—the Kekaha Agriculture Association (KAA) and Kalepa Koalition.<sup>175</sup> Both agricultural cooperatives are Chapter 421, HRS, agricultural cooperative associations. KAA is comprised of large, anchor tenants of ADC and through a Memorandum of Agreement with ADC, it operates, maintains, and improves the Kokee and Kekaha ditches and infrastructure in Kekaha. Rental rates charged for Kekaha lands are below market rent to subsidize the services and out-of-pocket expenses of KAA. As stated in Audit Report No. 21-01, KAA provides “a great deal of the capital for the agricultural infrastructure, such as the roads, drainage canals and ravines, irrigation systems, and electrical systems, as well as valuable expertise on potential agricultural activities and agronomically viable crops for the area.”<sup>176</sup> However, ADC still manages the day-to-day operational decisions.

ADC tenants in Kalepa are required to join the Kalepa Koalition, which is a smaller organization comprised mostly of small family farmers. The Kalepa Koalition is responsible for maintaining the internal roads, gates, and locks on Kalepa lands. Unlike with KAA, Kalepa Koalition members are unable to subsidize their operating expenses and therefore are more dependent on ADC to provide the necessary capital to upkeep roads.

Given the overall success of KAA and the Kalepa Koalition in managing ADC properties, the Committee finds that ADC should establish a similar model for its Oahu lands.

The Committee recognizes that security issues, such as trespassing and the abandonment of vehicles on ADC’s lands, will be a persistent issue for ADC that will require collaboration with other enforcement agencies. ADC has made significant progress with licensing its vacant lands on Oahu where security issues present the greatest challenge to ADC. The Committee finds that the consistent presence of tenants on the lands and the formation of an agricultural cooperative association comprised of ADC’s Oahu tenants will reduce the occurrence of security issues. Until then, the Committee finds that \$500,000 should be appropriated for security of ADC’s vacant properties.

## **Recommendation**

The Committee recommends that ADC facilitate the establishment of a tenant agricultural cooperative association for its lands on Oahu, similar to the agricultural cooperative associations comprised of ADC tenants on Kauai. All tenants should be required to join and pay dues to the association (similar to Common Area Maintenance). The association should be governed by a board of tenants of ADC lands and be responsible for security expenses.

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<sup>175</sup> See [Testimony of ADC on October 21, 2021](#); [Testimony of KAA Representatives on November 18, 2021](#).

<sup>176</sup> [Audit Report No. 21-01, p. 48](#).

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Until a tenant agricultural cooperative association is established on ADC's Oahu lands, the Committee recommends that \$500,000 be appropriated for security of ADC's vacant property.

The Committee also recommends that ADC evaluate the need to procure insurance against loss in connection with ADC-owned properties, pursuant to recommendation 22 under Audit Report No. 21-01.

## **Training**

### **Commentary**

The Committee agrees with the Auditor's recommendation for the ADC Board to attend training on the State's open meetings law (the Sunshine Law), Part I of Chapter 92, HRS.<sup>177</sup>

Audit Report No. 21-01 also recommended that ADC attend training on the Hawaii Procurement Code, codified under Chapter 103D, HRS.<sup>178</sup> ADC testified that it does not have a formal procurement officer, but its project manager is fully trained and certified for what they are required to do.<sup>179</sup> The Committee agrees with the Auditor and finds that ADC should further increase its training on the Hawaii Procurement Code and other useful areas such as property management; legal issues, including compliance with federal, state, and county laws and regulations, particularly with regard to water issues; and agriculture trends.

### **Recommendation**

The Committee recommends that the ADC Board attend training on the State's open meetings law (the Sunshine Law), and that ADC increase training on the Hawaii Procurement Code and property management, legal issues, and agriculture trends.

## ACCOUNTING RECORDS

### **Management of Financial Records**

#### **Commentary**

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<sup>177</sup> [Audit Report No. 21-01, p. 40.](#)

<sup>178</sup> [Audit Report No. 21-01, p. 38.](#)

<sup>179</sup> [Testimony of ADC on September 21, 2021.](#)

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Act 28, SLH 2019, authorized and appropriated funds for the Auditor to contract with an accounting firm to conduct a financial audit of ADC.<sup>180</sup> The Auditor contracted with Accuity LLP to conduct financial audits of the financial statements of ADC for the fiscal years ending June 30, 2019, and 2020.<sup>181</sup> However, due to the organization of ADC's financial records, Accuity LLP was unable to perform its audit on time and suspended its work.<sup>182</sup> Similar to DLNR, ADC hired KMH LLP to assist in organizing its records and converting its cash basis information to accrual basis information.<sup>183</sup> Since ADC had never been audited before, significant measurements needed to be made which required KMH LLP to pull together information dating back to the inception of ADC in 1994. After ADC hired KMH LLP, Accuity LLP restarted its work in fall 2020 and was expected to publish its report on the financial audit of ADC in January 2021.<sup>184</sup> However, as of this writing, the audit of ADC's financial statements for fiscal year ending June 30, 2019, has not been completed (see "[ADC Financial Audit](#)").<sup>185</sup>

Since the financial audit of ADC remains ongoing and is expected to make significant recommendations to ADC, the Committee finds that the Legislature should appropriate, if necessary, \$250,000 for a consultant to help ADC address any recommendations that may come from the financial audit scheduled to be completed by Accuity LLP pursuant to Act 29, SLH 2019.

The Committee also recognizes that the electronic database and filing system currently under development by Yardi Systems should improve ADC's accounting system (see "[Electronic Database and Filing System](#)"). Moving forward, there should be a dedicated accountant position in ADC to help manage its financial records.

## **Recommendation**

The Committee recommends that \$250,000 be appropriated, if necessary, for a financial consultant to help ADC address any recommendations that may come from the financial audit scheduled to be completed by Accuity LLP pursuant to Act 29, SLH 2019.

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<sup>180</sup> [Act 28, SLH 2019](#).

<sup>181</sup> [Professional Services Award, RFQ No. 2019-01, Conduct the Financial Audits of the Agribusiness Development Corporation for the Fiscal Years Ending June 30, 2019 and 2020, Contract No. 67938, Hawaii Awards & Notices Data System](#).

<sup>182</sup> [Audit Report No. 21-01, p. 4](#).

<sup>183</sup> [Testimony of Ross R. Murakami, Partner at KMH LLP, on December 15, 2021](#).

<sup>184</sup> [Audit Report No. 21-01, p. 5](#).

<sup>185</sup> On June 15, 2020, the Office of the Auditor cancelled the portion of Accuity LLP's contract relating to the audit of ADC's financial statements for the fiscal year ended June 30, 2020, due to insufficient funds.

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The Committee also recommends that an accountant position be added to ADC to help manage its financial records moving forward.

## OMISSIONS

### **ADC Financial Audit**

#### **Commentary**

As previously discussed in "Management of Financial Records," Act 28, SLH 2019, authorized and appropriated funds for the Auditor to contract with an accounting firm to conduct a financial audit of ADC.<sup>186</sup>

After hiring KMH LLP to help ADC organize its financial records to complete the financial audit, the report on the financial audit from Accuity LLP was expected to be completed in January 2021.<sup>187</sup> However, according to a partner at KMH LLP, several events or issues resulted in the further delay of ADC's financial audit by Accuity LLP. These include the retirement of ADC's long-standing administrative services officer in December 2020, the fire that occurred on ADC property in September 2021, and outstanding issues involving three agreements on the island of Kauai.

KMH LLP indicated that it had completed the bulk of its work that is considered necessary to complete the financial audit in summer 2021.<sup>188</sup> KMH LLP submitted its last outstanding deliverable, a draft Management Discussion and Analysis, to ADC at the end of September, and continues to provide advisory support to ADC until the audit concludes.<sup>189</sup> Although the Management Discussion and Analysis is a required component for audits of government entities, it should not stop the completion of the audit of financial statements.<sup>190</sup>

Therefore, the Office of the Auditor should immediately direct Accuity LLP to complete the audit of ADC's financial statements for fiscal year ending June 30, 2019. If there are any uncertainties regarding open issues, such as liability estimates related to the September 2021 fire, the Committee understands auditing procedures allow auditors to issue qualified opinions when there are matters that cannot be resolved because of uncertainty or other limitations to

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<sup>186</sup> Act 28, SLH 2019.

<sup>187</sup> Audit Report No. 21-01, p. 5.

<sup>188</sup> See Testimony of Ross R. Murakami, Partner at KMH LLP, on December 15, 2021; Testimony of Ross R. Murakami, Partner at KMH LLP, on January 10, 2022.

<sup>189</sup> Testimony of Ross R. Murakami, Partner at KMH LLP, on January 10, 2022.

<sup>190</sup> Testimony of Ross R. Murakami, Partner at KMH LLP, on January 10, 2022.

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the audit process or if there are disagreements.<sup>191</sup> A qualified opinion would include an explanation of the issue in the report without further delaying the issuance of the report.<sup>192</sup> The Committee is concerned with the timeliness of the financial audit because legislators need information now to act in the 2022 Regular Session.

## **Recommendation**

The Committee recommends that the Office of the Auditor immediately direct Accuity LLP to complete its financial audit of ADC and provide this audit to the Legislature.

## **Kauai Land and Water Infrastructure Portfolio**

### **Commentary**

Although the majority of ADC's lands are located on Kauai, analysis of these lands and the significant issues related to management of these lands were largely omitted from Audit Report No. 21-01.<sup>193</sup>

In part, Auditor Kondo testified before the Committee that this omission was because the Kauai lands and the management of those lands had already been risked out of the audit during the Office of the Auditor's risk assessment phase. Thus, it appears that the Auditor determined that the risks were low or not significant for ADC's Kauai lands because the lands already had ongoing operations (i.e., tenants and tenant agricultural cooperative associations to manage the lands) when ADC acquired those lands from DLNR through executive orders.

This explanation, however, rings hollow as Audit Report No. 21-01 highlights that there may have been serious problems that were identified on Kauai lands that analysts at the Office of the Auditor were aware of but simply did not pursue. In the Report, the Office of the Auditor explained that it initially reviewed seven of ADC's tenant files.<sup>194</sup> Two of these tenant files examined were Kauai tenants.<sup>195</sup> Based on its review of all seven of these tenant files, the Office of the Auditor proceeded to require review of all of ADC's tenant files.<sup>196</sup> The reported

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<sup>191</sup> [Testimony of Ross R. Murakami, Partner at KMH LLP, on January 10, 2022.](#)

<sup>192</sup> [Testimony of Ross R. Murakami, Partner at KMH LLP, on December 15, 2021](#); see [Testimony of Ross R. Murakami, Partner at KMH LLP, on January 10, 2022.](#)

<sup>193</sup> See [Audit Report No. 21-01.](#)

<sup>194</sup> [Audit Report No. 21-01, p. 18.](#)

<sup>195</sup> Two of seven tenant files requested by the Office of the Auditor on December 13, 2019, for purposes of fieldwork were for Kauai tenants.

<sup>196</sup> [Audit Report No. 21-01, p. 18.](#)



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“significant deficiencies” found in all these files indicate that there are in fact numerous problems with all of ADC’s leases and revocable permits that warrant auditing.<sup>197</sup>

The Committee also heard testimony that the completion of the financial audit of ADC by Accuity LLP was delayed due to outstanding issues that included three parcels on the island of Kauai (see "[ADC Financial Audit](#)").<sup>198</sup>

The Committee further finds the Office of the Auditor’s decision not to audit ADC’s largest land holding and to risk out the Kauai lands very problematic given the reporting on ADC’s management practices on Kauai. Less than three months after Act 28, SLH 2019, was enacted requiring an audit of ADC, a federal judge found that ADC had violated the federal Clean Water Act by polluting waters on West Kauai without a permit since 2015.<sup>199</sup>

The Committee, after a cursory review of the public record on Kauai’s ADC lands, also found an *Environment Hawaii* article from October 2016 about the exodus of anchor tenants in Kekaha, Kauai who were abandoning land.<sup>200</sup> Coupled with the documentary evidence received from ADC through this Committee’s subpoena powers, the article raised several significant issues that warrant further review. These issues include: (1) the potential impact to ADC when KAA tenants terminate their licenses or permits earlier than anticipated and exit the KAA agreement; (2) whether ADC has sufficient early termination penalties and is enforcing these penalties and other license or permit terms to the benefit of the State; and (3) whether there are appropriate land remediation requirements in licenses and permits as tenants either return their properties back to ADC or extend licenses and revocable permits with ADC.

The Committee finds these issues critically important because, similar to DLNR and its issues regarding licenses and revocable permits on public lands, ADC must work with existing tenants that have agreement termination dates to either extend or terminate those agreements and make those lands available to others, and these issues should be considered

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<sup>197</sup> [Audit Report No. 21-01, p. 18-19.](#)

<sup>198</sup> The lease or licenses agreements provided directly by ADC to Accuity LLP on December 10, 2021, were related to the Hanahanapuni Farm agreement in Kalepa, Kauai and the Hawaii Labor Solutions, Inc. and Kokee Farms licenses in Kekaha, Kauai.

<sup>199</sup> [State guilty of violating Clean Water Act on Kauai with cancer-linked Glyphosate, other pesticides \(khon2.com\)](#); see [Act 28, SLH 2019](#).

<sup>200</sup> [ADC Delays Syngenta’s Withdrawal Pending Briefing on Future Plans \(environment-hawaii.org\).](#)

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during this process. These termination dates for ADC's Kekaha tenants, which are based on a chart provided by ADC, are as follows:<sup>201</sup>

Termination Date	Tenant	RP/License No.
08/27/2022 (parties may extend)	KIUC (Kokee Ditch Diversion and Ditch (por))	LI-K1702
08/27/2022 (parties may extend)	KIUC (Mana Reservoir)	LI-K1703
12/31/2024	Andros Engineering Corporation	LI-K1502
08/13/2025	Kokee Farms LLC	LI-K1902
12/03/2027	Hartung Brothers	L-08202
03/31/2028	Beck's Superior Hybrids, Inc.	LI-K0801
03/31/2028	Pioneer Hi-Bred	LI-K0803
06/30/2029	Sunrise Capital, Inc.	LI-K1001
07/15/2047 (Lessee has option to extend for one 10-year period)	Beck's Superior Hybrids, Inc.	LE-K1201
02/28/2051	Kekaha Farms dba Under Da Mango Tree	LI-K1503
10/03/2051	Umi's Farm	LI-K1601
03/31/2052	Rong Seng Chen dba Funing Farm	LI-K1701
07/12/2055	Hawaii Labor Solutions	LI-K1901
Unclear Termination Date	Senter Petroleum	RP-7299
Unclear Termination Date	Gary Smith	RP-7004

Based on the foregoing and due to time constraints on the Committee to fully investigate ADC's land and water management on Kauai, the Committee recommends that the Legislature require and appropriate funds for a performance audit of ADC on its land and

<sup>201</sup> The Committee notes that the termination dates listed in the chart and ADC's tenant lists do not appear to match the termination dates in the lease agreements provided for Andros Engineering Corporation (11/12/2025); Kokee Farms LLC (08/13/2055); Sunrise Capital, Inc. (07/20/2029); and Kekaha Farms dba Under Da Mango Tree (03/03/2051). The chart and ADC's tenant lists do not provide termination dates for Senter Petroleum and Gary Smith, but one tenant list from 2019 notes that these are holdover RPs. According to the original RP documents and ADC Board minutes, these RPs are supposed to be renewed every year by the ADC Board.

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water infrastructure on Kauai. This performance audit should be conducted by an independent auditing firm and not the Office of the Auditor.

Ideally, the performance audit should be conducted after the financial audit for FY 2019 has been received from Accuity LLP, the Office of the Auditor conducts its follow up review to Audit Report No. 21-01, and ADC updates its Board policies and procedures consistent with the previous recommendation made by this Committee. However, the Committee recognizes that all these things may *not* occur so this Committee strongly recommends and emphasizes that an independent performance audit of ADC's land and water infrastructure portfolio on Kauai should be initiated no later than July 1, 2024, independent from the completion of the above noted tasks.

The scope of the audit should encompass ADC's land and water management practices on Kauai in general, but also examine the specific issues raised above and recent developments, such as:

- The approval of the Kauai Island Utility Cooperative and AES West Kauai Energy Project hydropower project that will affect ADC's lands on Kauai;<sup>202</sup>
- The Department of Education's plan to assume Beck's Hybrid's Kekaha lease with ADC for \$5,000,000;<sup>203</sup>
- The placement of a commercial processing center on Kauai, instead of Oahu; and
- KAA's effort to designate state lands as Important Agricultural Lands.<sup>204</sup>

## Recommendation

The Committee recommends that funds be appropriated to DOA to contract with an independent third-party auditing firm to perform an independent performance audit of ADC's Kauai land and water infrastructure portfolio beginning in 2024, after ADC has completed its follow up review with the Office of the Auditor and has had two years to address the findings and implement the recommendations of Audit Report No. 21-01, as well as implement the recommendations set forth by this Committee.

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<sup>202</sup> [PUC Approves Kauai Solar, Battery, Pumped Storage Hydropower Project | Ililani Media.](#)

<sup>203</sup> [Ways and Means Committee visits Kaua'i - The Garden Island.](#)

<sup>204</sup> [LUC Members Grill Kekaha Ag Co-op Over Its Important Ag Land Petition \(environment-hawaii.org\).](#)

# CHAPTER 4: OFFICE OF THE AUDITOR

## Chapter 4: Office of the Auditor

### INTRODUCTION

Although the Committee's initial investigation focused on Audit Report Nos. 19-12 and 21-01 and the audited agencies DLNR and ADC, the Committee decided to expand its investigation to include the Office of the Auditor when the Committee was:

- (1) Met with evasion by the Auditor in answering simple questions about the audit process;
- (2) Prevented from reviewing documents that are the basis of the Auditor's findings and recommendations; and
- (3) Apprised of critical omissions in the audit process that may constitute malfeasance and noncompliance with generally accepted government auditing standards utilized by government auditing agencies throughout the country and represent a larger pattern by Auditor Kondo to unilaterally decide not to report on certain substantive and critical issues discovered in the field.

Due to time constraints and other obstacles, the Committee was unable to fully investigate the Office of the Auditor. Based on the Committee's limited inquiry, review of documents, and questioning of witnesses related to the Office of the Auditor, the Committee made the following findings and recommendations related to updating and improving the Office of the Auditor's auditing policies and practices, improving transparency of the Office of the Auditor, encouraging a higher standard of professional judgment, following up on matters concerning the Office of the Auditor, and establishing greater collaboration with and oversight of the Office of the Auditor.

### AUDITING POLICIES AND PRACTICES OF THE OFFICE OF THE AUDITOR

#### **Updating the Office of the Auditor's *Manual of Guides* and Requiring Regular Training to Maintain Best Practices Consistent with *Government Auditing Standards***

##### **Commentary**

The Committee finds that the *Manual of Guides* produced to the Committee from the Office of the Auditor appears to be outdated. The Auditor's *Manual of Guides*, last updated in May 2014, cites to the 2011 Revision of *Government Auditing Standards* which is no longer

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effective.<sup>205</sup> In its response to the Committee's Draft Report, the Office of the Auditor explained "we have been working on an update to the *Manual of Guides* to include, among other things, the updates to the *Government Auditing Standards* promulgated by the U.S. Comptroller General."<sup>206</sup>

The Committee recognizes that the *Government Auditing Standards* is amended at various times by the Comptroller General of the United States, so updates should reflect the most current *Standards*. At the time of finalizing this Report, the most current version of the *Government Auditing Standards* is the 2018 Revision to *Government Auditing Standards* (Technical Update April 2021). Accordingly, this Committee recommends that the Office of the Auditor complete this update no later than June 30, 2022, to be consistent with the most current version of the *Government Auditing Standards*.

The Committee also recommends that the Office of the Auditor set up a regular process to update its *Manual of Guides* and publish the *Manual of Guides* on the Office's website so that all audited agencies, legislators, and the public can better understand the standards guiding the work of the Office of the Auditor.

The Committee further finds that contractors engaged by the Office of the Auditor should be provided with a copy of the Office of the Auditor's most recent *Manual of Guides* for reference. In his testimony before the Committee, Judge Randal K.O. Lee (ret.), who was contracted by the Office of the Auditor to conduct investigatory work, indicated that he was not provided with a copy of the Office of the Auditor's *Manual of Guides* and was not given an explanation of what the Yellow Book (i.e., *Government Auditing Standards*) was used for by the Office of the Auditor.<sup>207</sup> Although the Office of the Auditor contracted Judge Lee to conduct investigatory work and not an audit, the Committee finds that it would be beneficial for all contractors hired by the Office of the Auditor to understand the standards that guide the Office of the Auditor.

Because of the critical role of the Office of the Auditor in providing reports and analysis to the Legislature, the Committee finds that all employees of the Office of the Auditor should receive regular training to maintain best practices consistent with the *Government Auditing Standards* and that new employees, especially those with limited government auditing experience, should be required to be trained in accordance with these *Standards*.

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<sup>205</sup> See [2018 Revision to Government Auditing Standards](#).

<sup>206</sup> [Appendix D: Office of the Auditor Response to Draft Report, p. 22.](#)

<sup>207</sup> [Testimony of Judge Randal K.O. Lee \(Ret.\) on October 28, 2021.](#)

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Auditor Kondo testified that auditors at the Office of Auditor are required to have 80 hours of continuing professional education every two years.<sup>208</sup> In its response to the Committee's Draft Report, the Office of the Auditor further confirmed that its employees "undergo regular training, at least 80 hours every two years, as required by Yellow Book standards" and that at various times in 2017, 2018, and 2019, training was arranged from the United States Government Accountability Office or the United States Comptroller General's Advisory Council on Government Auditing Standards.<sup>209</sup>

The Committee commends the Office of the Auditor for conducting this training for its current employees and recommends that the Office continue this practice. However, what is not clear is whether these 80 hours every two years also includes subject matter "directly related to the government environment" or "the specific or unique environment in which the audited entity operates." This requirement is established under *Government Auditing Standards*, which provide that auditors who plan, direct, perform engagement procedures for, or report on an engagement conducted in accordance with *Government Auditing Standards*, should develop and maintain their professional competence by completing at least 80 hours of continuing professional education every two years, with at least 20 hours in each year of the two-year period, as follows:

- 24 hours of subject matter directly related to the government environment, government auditing, or the specific or unique environment in which the audited entity operates; and
- 56 hours of subject matter that directly enhances auditors' professional expertise to conduct engagements.<sup>210</sup>

The Committee finds that this subject matter requirement for training specific or unique to Hawaii's government environment could and should cover topics that the Office of the Auditor regularly applies, assesses, or opines on when conducting audits on government agencies and programs. These Hawaii-specific laws include topics such as Hawaii's Procurement Code, the State's open meeting laws (the Sunshine Law), the Public Land Trust Law and related court decisions, Hawaii's Public Trust Doctrine, and case law related to traditional and customary Native Hawaiian rights.

## Recommendation

The Committee recommends that the Office of the Auditor: (1) update its 2014 *Manual of Guides* to be consistent with the most current version of the *Government Auditing Standards*

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<sup>208</sup> [Testimony of State Auditor Leslie H. Kondo on September 20, 2021.](#)

<sup>209</sup> [Appendix D: Office of the Auditor Response to Draft Report, p. 22-23.](#)

<sup>210</sup> [Paragraphs 4.16 and 4.17 of the 2018 Revision to Government Auditing Standards.](#)

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issued by the Comptroller General of the United States; (2) publish its most updated *Manual of Guides* to the Office's website; (3) provide all contractors with a copy of the Office's *Manual of Guides*; and (4) ensure that all employees of the Office of the Auditor receive regular training to maintain best practices consistent with the *Government Auditing Standards* and require that new employees, especially those with limited government auditing experience, be trained in accordance with these *Standards*.

## Draft Audit Report Requirements

### Commentary

When the Office of the Auditor submitted its draft audit reports to DLNR and ADC, it did not include the Office's proposed recommendations, contrary to past practice.<sup>211</sup> When asked why the proposed recommendations were not included in the draft audit report, Auditor Kondo indicated that the audit recommendations are not necessary for a department to consider or comment on when it looks at a draft audit report because recommendations are just suggestions as to how to fix what the audit report found. Auditor Kondo also stated that the Committee and departments should focus on the audit report findings, not recommendations.

The Committee was surprised that the Auditor downplayed the importance of audit recommendations. After an audit is completed, audited entities are required to provide updates on their progress in implementing the recommendations made by the Auditor.<sup>212</sup> These status updates are then supposed to be relayed to the Legislature in the Auditor's annual report.<sup>213</sup> Furthermore, *Government Auditing Standards*, which are mandatory when conducting audits, indicate that auditors "should obtain and report the views of responsible officials of the audited entity concerning the findings, conclusions, and **recommendations** in the audit report, as well as any planned corrective actions"<sup>214</sup>

The Office of the Auditor explicitly acknowledges this requirement in its 2014 *Manual of Guides*: "[t]he GAGAS standards require reports to include the views of responsible officials of

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<sup>211</sup> See [Audit Report No. 19-12, p. 54](#); [Audit Report No. 21-01, p. 50](#).

<sup>212</sup> [HRS §23-4](#).

<sup>213</sup> [HRS §23-7.5](#).

<sup>214</sup> [Paragraph 9.50 of the 2018 Revision of Government Auditing Standards](#) (the language of this standard is nearly identical to [paragraph 7.32 of the 2011 Revision of the Government Auditing Standards](#), which was used by the Auditor during Audit Report Nos. 19-12 and 21-01) (emphasis added).

# CHAPTER 4: OFFICE OF THE AUDITOR

the agency audited concerning the findings, conclusions, and **recommendations**."<sup>215</sup> References throughout the Auditor's *Manual of Guides* clearly indicate that recommendations should be included in the draft audit report. For example, during the independent verification phase, the verifier notes *points*, such as "failure of the evidence to support the findings and recommendations in the draft."<sup>216</sup> Exhibits VI-A and VI-B on the Guidelines for Draft Reports also state that "[r]ecommendations are worded in complete sentences so that departments and agencies can make easy reference to it (sic) in their response."<sup>217</sup>

Since the progress of audited agencies will be measured against audit report recommendations, the Committee finds the agencies should be given the opportunity to comment on the recommendations at the draft audit report phase.

The Committee also finds that audited entities should be given ample time to properly and fully respond to draft audit reports. According to the Auditor's *Manual of Guides*, the specific response timeframe is currently decided by the Auditor, who may give the affected agencies approximately 10 calendar days to examine the draft audit report and respond.<sup>218</sup> ADC testified that it only had nine working days to respond to the draft audit report provided by the Auditor due to weekends and holidays.<sup>219</sup> This made it difficult for a small agency like ADC to receive input from the ADC Board who are volunteers subject to Hawaii's open meetings law (Sunshine Law) and provide a detailed response to the draft audit report. Providing a longer period to respond to draft audit reports will further enable boards that are subject to Sunshine Law notice and meeting requirements to meet to discuss the draft audit report and meet with the Auditor for an exit interview, if desired.<sup>220</sup>

The Committee understands that requiring the submission of draft audit reports 30 days in advance of the exit interview may put a strain on staff in the Office of the Auditor to complete audits sooner. The Committee requests that legislators be mindful of these time constraints when establishing audit deadlines and asks that the Auditor voice any concerns about short audit deadlines during the legislative process.

## Recommendation

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<sup>215</sup> Office of the Auditor, State of Hawaii, *Manual of Guides*, VI-11 (May 2014) (emphasis added).

<sup>216</sup> Office of the Auditor, State of Hawaii, *Manual of Guides*, II-9 (May 2014).

<sup>217</sup> Office of the Auditor, State of Hawaii, *Manual of Guides*, VI-21 and 24 (May 2014).

<sup>218</sup> Office of the Auditor, State of Hawaii, *Manual of Guides*, VI-11 and 16 (May 2014).

<sup>219</sup> [Testimony of ADC on September 21, 2021](#); [Testimony of ADC Board Ex-Officio Members M. Kaleo L. Manuel and Mary Alice Evans on November 17, 2021](#).

<sup>220</sup> [Testimony of ADC Board Ex-Officio Members M. Kaleo L. Manuel and Mary Alice Evans on November 17, 2021](#).



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The Committee recommends requiring the Office of the Auditor to provide audited agencies with a draft audit report that includes the Auditor's findings and recommendations at least 30 days before the exit interview.

## TRANSPARENCY OF THE OFFICE OF THE AUDITOR

### Access to the Office of the Auditor's Working Papers

#### Commentary

Section 23-9.5, HRS, states:

**[§23-9.5] Confidentiality.** The auditor shall not be required to disclose any working papers. For the purposes of this section, "working papers" means the notes, internal memoranda, and records of work performed by the auditor on audits and other investigations undertaken pursuant to this Chapter, including any and all project evidence collected and developed by the auditor.<sup>221</sup>

Section 23-9.5, HRS, was established in 1996 to allow the Auditor to reject disclosure requests under the Uniform Information Practices Act.<sup>222</sup> The confidentiality provision neither forbids the Auditor's disclosure of documents nor does it entirely protect documents from disclosure.<sup>223</sup> However, throughout the course of the Committee's investigation, Auditor Kondo repeatedly cited the confidentiality provision in his refusal to provide the Committee with information and evidence related to the Committee's investigation.

The Auditor routinely cited the confidentiality provision to block information and evidence that did not qualify as working papers such as public documents and basic information, including the names of staff who worked on an audit and dates when certain auditing processes were started and completed. The Auditor also refused to provide the Committee with audio recordings or transcripts of the interviews it conducted with department officials and employees even though the Committee obtained consent from the interviewees (see discussion in the following section entitled "Recorded Interviews"). The Committee was confused by the Auditor's statements that disclosing working papers would jeopardize the

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<sup>221</sup> [HRS §23-9.5](#).

<sup>222</sup> See legislative history of [Act 270, SLH 1996](#).

<sup>223</sup> See [HRS §92F-12\(b\)](#) (requiring the mandatory disclosure of government records, including those requested pursuant to a subpoena from either house of the state legislature, *notwithstanding any provision to the contrary*).

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Auditor's independence since the Committee was only seeking the working papers for audits that had already been completed and reported to the Legislature.

On September 29, 2021, the Committee issued its first and only subpoena duces tecum to the Office of the Auditor to obtain public documents that Auditor Kondo had previously agreed to provide under oath and deliverables from a financial audit that was specifically required by the Legislature under Act 209, SLH 2017, and funded by state monies.<sup>224</sup> Rather than cooperate with the Committee and comply with the subpoena duces tecum, the Auditor filed a motion in court for enlargement of time to respond to and/or to quash or for protective order against subpoena duces tecum issued upon the Auditor by the Committee on September 29, 2021. The Auditor's motion to quash was granted in part and denied in part. The Auditor was ordered to produce the public documents to the Committee but did not have to produce the deliverables from the financial audit.

At the outset, the Committee expected cooperation from the Auditor. Auditor Kondo testified that the Office of the Auditor has nothing to hide and did its job well.<sup>225</sup> Section 21-16, HRS, requires state and county officers and employees to cooperate with investigating committees and their representatives and furnish information as may be called for in connection with the research activities of the committees.<sup>226</sup> The Legislature also specifically directed and funded the audits of SLDF and ADC.<sup>227</sup> As the client, the Committee finds that the Legislature, on behalf of the public, should have access to the audit records. Furthermore, the Auditor routinely provides access to its records for third-party peer review.

The Committee finds that congressional members and investigative committees are allowed access to audit documentation. For example, the United States Government Accountability Office (GAO), which provides auditing, evaluation, and investigative services for the United State Congress, will grant members, upon their written request, access to audit documentation at GAO offices or provide copies of selected audit documentation after a

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<sup>224</sup> See [09-29-21 Subpoena Duces Tecum to Auditor](#) (the subpoena duces tecum was for the Auditor's Manual of Guides, contracts with KKDLY, LLC and Accuity LLP for financial auditing services, and information prepared by KKDLY, LLC as part of its financial audit); [Act 209, SLH 2017](#).

<sup>225</sup> [Testimony of State Auditor Leslie H. Kondo on September 13, 2021](#); [Testimony of State Auditor Leslie H. Kondo on September 20, 2021](#).

<sup>226</sup> [HRS §21-16](#).

<sup>227</sup> [Act 209, SLH 2017](#); [Act 28, SLH 2019](#).

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product has been made publicly available.<sup>228</sup> GAO's statutory responsibility to keep its records confidential does not authorize information to be withheld from Congress.<sup>229</sup>

The Committee also finds Auditor Kondo's unwillingness to furnish information and evidence to an investigative committee problematic. Ultimately, Auditor Kondo's uncooperativeness prevented the Committee from obtaining important information and evidence, delayed the Committee's receipt of documents and information, and resulted in the unnecessary expenditure of public resources by the Office of the Auditor to hire outside counsel for litigation against the Committee. The Committee does not believe that the Auditor's working papers should be outside of an investigative committee's subpoena power. For these reasons, the Committee finds that section 23-9.5, HRS, should be amended to require the Auditor to disclose information, evidence, and requested documents to investigative committees after audit reports have been issued.

## Recommendation

The Committee recommends amending section 23-9.5, HRS, to require the Auditor to disclose information, evidence, and requested documents to investigative committees after audit reports have been issued.

## Recorded Interviews

### Commentary

The Committee heard testimony questioning whether it is appropriate for auditors to record interviews.<sup>230</sup> In any event, if and when interviews are recorded, the Auditor should not be allowed to shield those documents from disclosure especially if the person interviewed requests copies of the interview or other safeguards or requirements are met under other laws that require or warrant disclosure.

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<sup>228</sup> [GAO's Congressional Protocols, July 2017, p. 19-20.](#)

<sup>229</sup> [Title 31 United States Code §716.](#)

<sup>230</sup> [Testimony of Former Administrative Deputy Auditor Ronald Shiigi on October 20, 2021](#) (explaining that in his experience with private and government auditing, recorded interviews were never used); [Testimony of Edwin Young on October 28, 2021](#) (stating that one of the intimidation techniques that auditors were told not to do is use a microphone or tape recorder because it will bias the interview, making the interviewee less candid, truthful, and open); see [paragraph 8.104\(d\) of the 2018 Revision to Government Auditing Standards](#) and [paragraph 6.61\(d\) of the 2011 Revision to Government Auditing Standards](#) ("Testimonial evidence obtained under conditions in which persons may speak freely is generally more reliable than evidence obtained under circumstances in which the persons may be intimidated").

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The only reason the Committee found out about the forged easement involving a DLNR Kauai parcel is because the BLNR Chairperson requested a copy of her recorded interview and produced the audio of that interview to the Committee pursuant to a subpoena duces tecum.<sup>231</sup> The Committee and the public probably would have never learned about the forged easement unless there was a whistleblower who was brave enough to come forward to disclose that information.

Despite all interviewed ADC and DLNR employees and board members signing waivers for the release of their interviews, Auditor Kondo still refused to provide those interviews to either the interviewed subjects or the Committee.<sup>232</sup> Auditor Kondo even refused to produce the recorded interviews to ADC pursuant to a Uniform Information Practices Act (UIPA) request, asserting the primacy of Section 23-9.5, HRS, over the State's public records laws. This adamant refusal to disclose the interviews stands in stark contrast to use of interview comments in both Audit Report Nos. 19-12 and 21-01. Although Auditor Kondo routinely stated that the Office of the Auditor promised the interviewees that the recorded interviews would remain confidential, the Committee notes that Audit Report Nos. 19-12 and 21-01 used direct quotes from those interviews, thereby breaching the promised confidentiality.<sup>233</sup> The Committee finds that this selective disclosure of portions of recorded interviews contrasts starkly with the Auditor's unwillingness to disclose interviews after receiving UIPA requests from the subjects who were interviewed and knowing that the Committee was in receipt of signed confidentiality waivers from the interviewed subjects.

## **Recommendation**

The Committee recommends legislation to clarify that the Office of the Auditor is not allowed to shield documents from public disclosure, such as recorded interviews, when other safeguards or requirements are met under other laws that require or warrant disclosure.

## **Witness Reluctance/Hesitancy and Influence**

### **Commentary**

Efforts by the Committee to speak with current and former employees were hindered by the Office of the Auditor. Not only was Auditor Kondo unwilling to provide the Committee with

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<sup>231</sup> See "[Forged Easement](#)" under Chapter 2 of this Report.

<sup>232</sup> See [HRS §92F-12\(b\)\(1\)](#) (requiring each agency, notwithstanding any provision to the contrary, to disclose "[a]ny government record, if the requesting person has the prior written consent of all individuals to whom the record refers").

<sup>233</sup> See [Audit Report No. 19-12](#); [Audit Report No. 21-01](#); see also [Testimony of Former Administrative Deputy Auditor Ronald Shiigi on October 20, 2021](#).

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the names of staff who worked on an audit, he attempted to dissuade employee cooperation with the Committee by threatening ethics violations. The Committee finds that this resulted in reluctance or unwillingness by former employees from the Office of the Auditor, including former employees who had completed field work on the SLDF Audit and former or current contractors currently employed by the Office of the Auditor, to informally meet with the Committee or testify in a public hearing regarding the audits of SLDF and ADC or their experiences at the Office of the Auditor.

The Committee also learned late in its investigation that there may have been improper conduct by the Office of the Auditor with respect to witness testimony before the Committee. As discussed above, the Committee heard testimony on December 15, 2021, from a subpoenaed partner at KMH LLP regarding KMH LLP's work in assisting with the financial audit of ADC conducted by Accuity LLP.<sup>234</sup> Following that hearing, the Committee received two letters from the subpoenaed partner at KMH LLP on December 17 and 27, 2021, modifying the testimony provided on December 15, 2021.<sup>235</sup>

When questioned by the Committee at a follow up hearing on January 10, 2022, the subpoenaed partner at KMH LLP testified that the financial audit partner at KMH LLP had been contacted by Auditor Kondo on December 15 and after the December 17, 2021 letter, regarding KMH LLP's testimony on the financial audits of ADC.<sup>236</sup> When asked if these letters sent to the Committee were influenced by anyone, the subpoenaed partner at KMH LLP testified that Auditor Kondo had expressed concerns to the financial audit partner at KMH LLP that the subpoenaed partner's testimony may have given the impression that KMH LLP was completely done providing assistance to ADC, which is not true because KMH LLP continues to be available to assist ADC until the audit process is complete.

The Auditor's conduct with regard to KMH LLP's testimony further raises concerns about the objectivity of the Office of the Auditor, specifically the effort to influence testimony previously provided under oath by the subpoenaed partner. Part VI of Chapter 710, HRS, codifies certain offenses related to judicial and other proceedings, including witness intimidation, witness tampering, and retaliation against a witness. Although Chapter 21, HRS, is this Committee's guiding statute, Chapter 710, HRS, also applies to this Committee's proceedings where the Committee is "authorized to take evidence under oath."<sup>237</sup> The Committee had

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<sup>234</sup> [Testimony of Ross R. Murakami, Partner at KMH LLP, on December 15, 2021.](#)

<sup>235</sup> [Testimony of Ross R. Murakami, Partner at KMH LLP, on January 10, 2022.](#)

<sup>236</sup> [Testimony of Ross R. Murakami, Partner at KMH LLP, on January 10, 2022.](#)

<sup>237</sup> See [HRS §710-1000](#) (defining "official proceeding" as "a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner,

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previously warned that conduct determined to be obstruction, retaliation, and interference would be frowned upon and viewed negatively by the Committee.<sup>238</sup> However, it is not for this Committee to determine whether Auditor Kondo's actions violate Chapter 710, HRS (see "[Performance Audit and Further Investigation of the Office of the Auditor](#)") or other professional and ethical standards.

## **Recommendation**

The Committee recommends passage of legislation that clarifies that cooperation with a legislative investigative committee is not an ethics violation that jeopardizes a potential witness.

## PROFESSIONAL JUDGMENT

### **Commentary**

The Committee found several misleading or unsupported statements in Audit Report Nos. 19-12 and 21-01 that raise concerns about the professional judgment of the Office of the Auditor.

#### Audit Report No. 19-12

In its review of the KIA lease extensions, the Office of the Auditor criticized the proposed improvements for certain KIA leases as insufficient under Act 149.<sup>239</sup> Under the text box "Substantial Extension for Substantial Improvements?", the Auditor states that the improvements for 10 of the 16 KIA lease extensions reviewed by the Office of the Auditor would not have qualified as substantial improvements under Act 149 because the improvement costs did not reach the 30 percent threshold established. The Committee finds this assessment unfair and misleading. As noted in Audit Report No. 19-12, the 10 KIA leases referenced were extended before passage of Act 149, under an entirely different statute that does not define the term "substantial improvement." The Committee finds that it is inappropriate for the Office of the Auditor to suggest that the KIA lease extensions were somehow flawed because the proposed improvements do not meet a standard that did not exist at that time.

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commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding").

<sup>238</sup> See [Committee Meeting on September 29, 2021](#).

<sup>239</sup> [Audit Report No. 19-12, p. 10](#).

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The Committee further finds that language used in Audit Report No. 19-12 stating that DLNR hired a consultant to assist in "cleaning up" its accounting records is misleading.<sup>240</sup> As previously discussed in "[Accounting Records](#)" under Chapter 2 of this Report, agencies like DLNR do not organize their accounting records on an accrual basis. Therefore, DLNR needed assistance from an accounting firm to help organize its accounting records so that those records could then be audited.

The Committee also finds that the discussion on ceded lands in Audit Report No. 19-12 is inadequate (see discussion in "[The Public Land Trust and Ceded Land Revenues](#)"). The Report posed several questions and engaged in analysis that lacked sufficient basis and legal understanding. The Report seems to question the propriety of DLNR's actions without offering any meaningful explanation, facts, or arguments to support the reasons for asking those questions.

For example, under the text box "Superseding the Legislature?", Audit Report No. 19-12 asked the overarching question of whether BLNR overstepped its authority when it designated Land Division properties on ceded lands as "income-producing assets."<sup>241</sup> The Committee is confused by this question because at no point does the Report clearly explain its basis. It appears to the Committee that the question is the result of Audit Report No. 19-12 conflating the public trust doctrine, public land trust law, and policy questions related to ceded land revenues.

Based on the foregoing, the Committee questions the validity of the work product from the Office of the Auditor.

## Audit Report No. 21-01

Audit Report No. 21-01 represented the allegations of a plaintiff in a pending lawsuit against ADC as if those allegations were established fact.<sup>242</sup> This recklessness has directly impacted ADC's ongoing litigation, as predicted by ADC, with the plaintiff citing directly to Audit Report 21-01 as the basis for its "facts."<sup>243</sup> As discussed by ADC, the Office of the Auditor could have used another example to illustrate its point, without compromising the State's position in ongoing litigation.<sup>244</sup> The Committee finds Auditor Kondo's actions inappropriate, misleading, and irresponsible.

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<sup>240</sup> [Audit Report No. 19-12, p. 36.](#)

<sup>241</sup> [Audit Report No. 19-12, p. 38.](#)

<sup>242</sup> See [Audit Report No. 21-01, p. 22, 24, 41-42, 46; Appendix C: Closing Statements of ADC, p. 1.](#)

<sup>243</sup> [Appendix C: Closing Statements of ADC, p. 1.](#)

<sup>244</sup> [Appendix C: Closing Statements of ADC, p. 1.](#)

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Overall, the Committee questions the sufficiency and appropriateness of evidence in Audit Report Nos. 19-12 and 21-01. Under *Government Auditing Standards*, "[a]uditors must obtain sufficient, appropriate evidence to provide a reasonable basis for addressing the audit objectives and supporting their findings and conclusions."<sup>245</sup> In addition to the examples above, the Committee notes that both audits relied heavily on testimonial evidence and Audit Report No. 21-01 cited to various news sources.<sup>246</sup> The Committee finds this work sloppy. As a purported Yellow Book office, the Office of the Auditor must exercise a higher standard of professional judgment to maintain the integrity and credibility of its audit reports.

## **Recommendation**

The Committee recommends that the Office of the Auditor exercise a higher standard of professional judgment to avoid sensationalizing reports and making misleading or false statements and ensure that its audit reports are properly supported by sufficient and appropriate evidence.

## FURTHER FOLLOW UP NEEDED

### **Contract Cancellations and Terminations Raise Concerns about the Management of Public Monies that Need to Be Explained and Accounted For**

#### **Commentary**

Act 1, Special Session Laws of Hawaii 2017 (Act 1), appropriated \$1,000,000 in general funds to the Office of the Auditor to conduct:

- (1) Annual reviews of any rapid transportation authority in the State charged with the responsibility of constructing, operating, or maintaining a locally preferred alternative for a mass transit project that receives monies from a surcharge on state tax and/or transient accommodations tax revenues; and
- (2) An audit of the Honolulu Authority for Rapid Transportation (HART) in accordance with Act 1 and submit its findings 20 days prior to the convening of the Regular Session of 2019.<sup>247</sup>

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<sup>245</sup> Paragraph 8.90 of the 2018 Revision of Government Auditing Standards; see also paragraph 6.56 of the 2011 Revision of Government Auditing Standards.

<sup>246</sup> Audit Report No. 19-12; Audit Report No. 21-01.

<sup>247</sup> Act 1, Special Session Laws of Hawaii 2017.



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The Office of the Auditor contracted with several individuals and accounting firms to work on the audit of the HART, including Judge Randal K.O. Lee (ret.), Daniel Hanagami, BKD, LLP, and Baker Tilly Virchow Krause, LLP. Testimony from Judge Lee revealed that after he started his review of HART documents and reported his findings to the Office of the Auditor, he was instructed by Auditor Kondo to “pause” the work. The Committee is concerned that part of Judge Lee’s findings given to Auditor Kondo included evidence of potential mismanagement of public funds, but Judge Lee’s detailed findings were not included in the final HART Audit. Eventually, Judge Lee’s contract was terminated by Auditor Kondo and the reason given was lack of available funding.

The Committee reviewed detailed financial records from the Department of Accounting and General Services and determined that of the \$1,000,000 in general funds appropriated to the Office of the Auditor, approximately \$102,827.12 remains unspent and unencumbered (see [Appendix H “Summary of HART Audit Concerns”](#)). No explanation was given to the Committee regarding the use of these remaining funds.

The Committee is also aware that the Office of the Auditor and BKD, LLP are currently in a contract dispute relating to the work performed by BKD, LLP on the HART audit. The Committee has questions regarding BKD, LLP’s prior contracts with the Office of the Auditor, the amount of funds in dispute, and the additional public funds expended after termination of BKD, LLP’s multi-year contracts for audits of the Department of Transportation Airports and Highways Divisions (see further discussion in [Appendix H “Summary of HART Audit Concerns”](#)). However, due to time constraints, the ongoing dispute between the Office of the Auditor and BKD, LLP, and BKD, LLP’s reluctance to participate with the Committee’s investigation, the Committee was unable to investigate these matters further. Instead, the Committee recommends that the Legislature require the Auditor to submit reports on these matters.

## **Recommendation**

The Committee recommends that the House of Representatives and/or the Legislature require the Office of the Auditor to submit reports to the Legislature on:

- (1) The expenditure and/or lapsing of the \$1,000,000 appropriated for the audit work conducted pursuant to Act 1, Special Session Laws of Hawaii 2017, including any litigation costs involving disputes with any contractors hired by the Office of the Auditor pursuant to Act 1, by June 30, 2022; and
- (2) The outcomes and costs involving its dispute with BKD, LLP, including mediation and/or litigation costs and the agencies that paid for those costs, including the sources of funding, when the matter is resolved.

# CHAPTER 4: OFFICE OF THE AUDITOR

## Performance Audit and Further Investigation of the Office of the Auditor

### Commentary

The Committee's brief investigation into the Office of the Auditor raised serious concerns regarding the practices and policies of the Office of the Auditor.

As previously discussed, the Committee discovered that Auditor Kondo had disregarded or instructed staff not to pursue certain substantive and critical issues uncovered during or related to the audits of SLDF and ADC.<sup>248</sup> The Committee finds that the Office of the Auditor has an obligation to report on substantive and critical issues as well as potential mismanagement, malfeasance, fraud, and auditing irregularities discovered because they may warrant further inspection or signal weaknesses in the internal controls of an agency.<sup>249</sup> The Committee also finds that the Auditor's unwillingness to disclose working papers may signal that something is amiss.

The Committee's investigation into the HART Audit raises serious questions about the Office of the Auditor's independence, objectivity, judgment, adherence to laws and *Government Auditing Standards*, and management of contracts and public funds (see discussion in [Appendix H "Summary of HART Audit Concerns"](#)). Committee members also received communications from individuals who had worked with Auditor Kondo, sharing concerns about the lack of independence and professionalism by Auditor Kondo (see [Appendix I "Redacted Communication Regarding Auditor Leslie K. Kondo to Committee Member \(Dated November 12, 2021\)"](#)). Unfortunately, the Committee was not able to fully investigate these issues due to time constraints.

As previously discussed in the section entitled "[Professional Judgment](#)," there are several issues regarding misleading, false, and unsupported statements in Audit Report Nos. 19-12 and 21-01. According to one of the Committee's witnesses who has over 45 years of auditing experience at the federal, state, and city and county levels of government and participated in peer reviews across the country, making misleading or false statements is an attribute of a dysfunctional audit office.

The Committee heard concerning testimony that personnel turnover at the Office of the Auditor is occurring at the rate of 40 percent or more due to Auditor Kondo's inconsistent leadership, decision making, and audit processes.<sup>250</sup> Auditor Kondo's leadership was

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<sup>248</sup> See "[Unreported Issues](#)" and "[Omissions](#)."

<sup>249</sup> See [Testimony of Edwin Young on October 28, 2021](#).

<sup>250</sup> [Testimony of Edwin Young on October 28, 2021](#).

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described as authoritarian and outdated and he is alleged to rule by intimidation. The testifier even referred to Auditor Kondo as "the poster child for bad auditing."

The Committee is also concerned about Auditor Kondo's staff recruitment practices. At least three out of seven people who filed complaints against Land Division Administrator Russell Y. Tsuji were hired by or received an unsolicited job offer from the Office of the Auditor.<sup>251</sup> The Committee finds these circumstances to be odd especially considering that the individuals recruited do not appear to have backgrounds in auditing.

The Committee is concerned about the issues being raised, particularly with regard to Auditor Kondo's independence and compliance with *Government Auditing Standards*. The Committee heard testimony that if the Office of the Auditor fails to follow *Government Auditing Standards*, it could be decertified.<sup>252</sup> Once an auditor loses accreditation, its financial audits of state financial statements are no longer credible. This could result in the lowering of the government's rating which means that the State will have to pay a higher interest rate on its bonds in order to get hedge funds and other investors to purchase the bonds.

The Committee recognizes that the Office of the Auditor undergoes triennial peer reviews pursuant to *Government Auditing Standards*.<sup>253</sup> The purpose of the external peer review is to determine whether the Office of the Auditor's quality control system is suitably designed and complied with to provide the Office with "reasonable assurance that it is performing and reporting in conformity with professional standards and applicable legal and regulatory requirements in all material respects."<sup>254</sup> The two most recent peer reviews performed in 2016 and 2019 by the National Conference of State Legislatures gave the Office of the Auditor the rating of "pass."<sup>255</sup> Each Peer Review Team conducted an onsite visit; reviewed documentation relating to the function of the Office of the Auditor, its audit-related policies and procedures, and four performance audits; and reviewed continuing professional education records. Although the Committee understands the importance of these external peer reviews and acknowledges the positive feedback that the Office of the Auditor has received, it finds that these reviews are not as thorough as a performance audit.

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<sup>251</sup> See [Column: DLNR's public lands revenue efforts are prudent, follow law | Honolulu Star-Advertiser \(staradvertiser.com\); Appendix J: Unredacted Email from Keith Chun to DLNR Personnel Officer \(Dated June 22, 2016\)](#).

<sup>252</sup> [Testimony of Edwin Young on October 28, 2021](#).

<sup>253</sup> See [paragraph 5.84 of the 2018 Revision of Government Auditing Standards](#).

<sup>254</sup> [Paragraph 5.60 of the 2018 Revision of Government Auditing Standards](#).

<sup>255</sup> [2019 Peer Review of the State of Hawaii Office of the Auditor; 2016 Peer Review of the State of Hawaii Office of the Auditor](#).

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The Committee finds and recommends that these issues identified in this Report merit further review by an independent third party that can conduct a thorough performance audit of the Office of the Auditor.

The Committee also finds and recommends that questions and concerns with the Office of Auditor raised in this Report should be investigated further by the Department of the Attorney General.<sup>256</sup>

## **Recommendation**

The Committee recommends further investigation of the Office of the Auditor by an independent third party that can conduct a thorough performance audit of the Office of the Auditor.

The Committee also recommends that the Department of the Attorney General investigate questions and concerns raised in this Report.

## ESTABLISHING GREATER COLLABORATION WITH AND OVERSIGHT OF THE OFFICE OF THE AUDITOR

### **Commentary**

The Committee finds that the House of Representatives' concerns may not be addressed by the Office of the Auditor due to potential conflicts of interest. [Appendix J](#) shows that as a DLNR employee was disengaging from employment with DLNR, that person had multiple consultations with an attorney from a law office where the Committee Chair practices,<sup>257</sup> an unsolicited job offer from the State Auditor, an unsolicited invitation to join a golf foursome that would include a Senator, and multiple conversations with a staff member with the Office of the Senate President.

Although the DLNR employee did not end up working for the Office of the Auditor, the Office of the Auditor did meet with this employee during its planning phase for Audit Report No. 19-

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<sup>256</sup> See "[Recorded Interviews](#)," "[Witness Reluctance/Hesitancy and Influence](#)," and "[Comments on Responses](#)."

<sup>257</sup> The Committee Chair publicly disclosed in its [hearing on September 13, 2021](#), this information to the Committee. The Committee Chair had effectively been firewalled from the matter for the past five years and only became aware of the potential representation after receiving this letter from DLNR. The Committee Chair continued to maintain any necessary firewall and informed the Speaker of the House of Representatives who determined that there was no conflict.

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12.<sup>258</sup> DLNR also had concerns regarding the Office of the Auditor's solicitation and communications with this employee as well as the employment of two former DLNR employees and the impact of these actions on the objectivity of Audit Report No. 19-12.<sup>259</sup>

The Committee finds that this information raises concerns about the overall objectivity of the Office of the Auditor, particularly in light of the absence of any meaningful review of Kauai by the Office of the Auditor. One way to address the Committee's concerns as well as the other concerns raised in this Report is to establish better collaboration with and oversight of the Office of the Auditor that mirrors good practices in other government sectors that have an audit committee to help oversee the work management and workflow of its auditor. Both the City and County of Honolulu and the County of Kauai have statutory language in their Charters empowering the county councils to establish audit committees to advise their County Auditors on similar topics.<sup>260</sup>

The Committee recommends that the Legislature establish an Audit Committee modeled after the audit committees provided for under the charters of the City and County of Honolulu and County of Kauai. The Audit Committee should specifically have the authority to advise the Auditor on the formulation of the plan of audits proposed to be conducted by the Auditor; conduct of audits; follow up of audits; selection of private contractors to perform audits for the Auditor; evaluation of preliminary audit findings and recommendations and agency, officer, or employee responses to the preliminary findings and recommendations; and evaluation of the Auditor's performance during each fiscal year. The Committee notes that the Audit Committee will only serve in an advisory capacity regarding these areas and that the Auditor will retain independence. The Committee also recommends that the Office of the Auditor should be required to obtain approval for any litigation and identify the source of funding for its litigation costs.

As previously mentioned, the Committee had several issues with the scope of the audits of SLDF and ADC. Most notably, the Committee found the exclusion of Kauai from the scope of the audit of ADC particularly striking since the majority of ADC's lands are located on Kauai. Although Auditor Kondo indicated that he regularly consults with legislators at the beginning of an audit to determine scope, the Committee finds that this process should be formalized to

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<sup>258</sup> See [Testimony of Keith Chun, Former State Land Planning & Development Manager, Land Division, on October 21, 2021](#); [Testimony of Former Administrative Deputy Auditor Ronald Shiigi on October 20, 2021](#).

<sup>259</sup> See [Column: DLNR's public lands revenue efforts are prudent, follow law | Honolulu Star-Advertiser \(staradvertiser.com\)](#).

<sup>260</sup> See [section 3-503 of the Revised Charter of the City and County of Honolulu 1973 \(Amended 2017 Version\)](#); [section 32.03 of the Charter of the County of Kauai \(2020 Codified Version\)](#).

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ensure greater participation among the subject matter chairs at the outset of an audit. The Committee does not want audits to simply reflect the wishes of individual legislators, but rather capture the intentions of the House of Representatives, Senate, or Legislature as a whole and address the significant issues being examined by the Legislature.

The intention of these recommendations is to establish a process and procedure consistent with government practice in other jurisdictions to ensure greater confidence in and oversight of the Office of the Auditor.

## **Recommendation**

The Committee recommends that the Legislature establish greater collaboration with and oversight of the Office of the Auditor through the establishment of an Audit Committee similar to the audit committees described by the Charters of the City and County of Honolulu and the County of Kauai. This Audit Committee should have authority to advise the Auditor on the formulation of the plan of audits proposed to be conducted by the Auditor; conduct of audits; follow up of audits; selection of private contractors to perform audits for the Auditor; evaluation of preliminary audit findings and recommendations and agency, officer, or employee responses to the preliminary findings and recommendations; and evaluation of the Auditor's performance during each fiscal year. This Audit Committee should further require the Office of the Auditor to obtain approval for any litigation and to identify the source of funding for the lawsuit.

The Committee also recommends that the Auditor be required to consult with the relevant House and Senate subject matter chairs as part of the oversight body to better determine the scope of audits directed or requested by the Legislature, House of Representatives, or Senate.

# CHAPTER 5: RECOMMENDATIONS

## Chapter 5: Recommendations

### RECOMMENDATIONS RELATED TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES

- (1) DLNR's Land Division should prioritize developing a strategic plan for DLNR's revenue-generating lands since these provide the majority of SLDF's revenues and fund significant portions of DLNR's programs;
- (2) The Legislature should regularize and make consistent the various lease extension statutory language in Chapter 171, HRS. The Legislature should also amend the lease extension laws to specifically:
  - (A) Allow all types of leases to be extended, but require that all lease extensions, regardless of whether those leases were obtained through direct negotiation or the public auction process, use the most current lease form and leasing practices and policies, including provisions to allow the State to be paid its fair share of sublease income;
  - (B) Allow the State to charge rent premiums on extended leases to compensate the State for forgoing the reversionary interest and incorporate the value of the improvements on the property; and
  - (C) Require a lessee to pay for the appraisal required for the reopening of rent in the extended lease term and preclude the lessee from protesting the rent so determined;
- (3) DLNR should create a standardized lease template that incorporates statutory provisions and current industry leasing terms and practices, including provisions to address environmental issues in the event environmental mitigation is needed. DLNR should use this standardized lease template for all new leases and to update its current leases;
- (4) For those properties where there is no interest in the public auction as determined by responses to a Request for Interest solicitation or by holding a public auction, DLNR should be allowed to negotiate direct leases for five to 10 years with a basic appraisal process;
- (5) DLNR should require third-party inspectors to conduct physical inspections of all leased properties every five years to ensure compliance with lease terms. DLNR should choose the inspectors and require the lessee to pay the

# CHAPTER 5: RECOMMENDATIONS

- inspection fee and make the corrections recommended in the inspection report;
- (6) DLNR should continue to develop and update its policies and procedures;
  - (7) DLNR and BLNR should continue the recently instituted practice of annually reviewing the status and plans of each RP by county;
  - (8) DLNR should continue its training for members of BLNR on the State's open meetings law (Sunshine Law), ethics, and Native Hawaiian law and add training sessions on contested case hearings, the procurement code, and individual sessions with the leadership of each DLNR division, bureau, and office. BLNR should also continue its conflicts of interest training and continue to ensure that there is access to a deputy attorney general at every board meeting to answer questions about conflicts of interest;
  - (9) DLNR should maintain/adopt the accounting practices that KMH LLP recommended as it assisted DLNR in organizing its financial records for future financial audits;
  - (10) DLNR should continue to follow up on recommendations provided by N&K CPAs, Inc. in its audits of DLNR's financial statements for fiscal years ending June 30, 2017, 2018, 2019, 2020, 2021, and 2022;
  - (11) There should be additional inquiry into the public land trust and ceded land revenues by the appropriate House legislative committees;
  - (12) The Legislature should consider whether there needs to be further follow up on the review and examination of contracts, grants, and memoranda of understanding entered into, awarded by, or otherwise involving SLDF between the period beginning July 1, 2015, through June 30, 2017, since the Auditor did not focus on all of these matters in Audit Report No. 19-12;
  - (13) DLNR and the Attorney General should complete their work to correct and remove the forged easement on Kauai; and
  - (14) DLNR should follow up regarding the potential loss of non-profit status of its lessees and its impact on leases. DLNR should also examine its practices surrounding non-profits, including its preference or discount for non-profits.



# CHAPTER 5: RECOMMENDATIONS

## RECOMMENDATIONS RELATED TO THE AGRIBUSINESS DEVELOPMENT CORPORATION

- (1) Chapter 163D, HRS, should be amended to refocus, update, and streamline ADC's authorizing statute to reflect the current state of farming and focus on Hawaii's needs for local agricultural products in addition to export products. Specifically, the Committee recommends:
  - (A) Having ADC prioritize entering into lease agreements designed to increase the production of local agricultural products for local consumption and supporting small farmers, while continuing to focus on commercial exports;
  - (B) Aligning plans and projects with recently set goals for the purchasing of local agriculture products for local consumption;
  - (C) Making various changes throughout Chapter 163D, HRS, to deemphasize marketing and emphasize production for local consumption; and
  - (D) Amending ADC's powers, duties, and responsibilities to repeal functions performed by other agencies;
- (2) ADC should coordinate and administer programs to increase local production of agricultural products for local consumption, reduce the State's reliance on imported agricultural products, and increase access to farmland and related infrastructure for local farmers and cooperatives;
- (3) ADC should update its mission statement based on the changes made in this Report and every five years thereafter;
- (4) By July 1, 2024, ADC, in coordination with DOA, should prepare and post on its website, a Hawaii Agribusiness Plan that is specific to ADC and its focus. The Plan should specifically include:
  - (A) An inventory of agricultural lands within the purview of ADC with suitable adequate water resources that are or will become available and can be used to meet present and future agricultural production needs;
  - (B) An inventory of available agricultural infrastructure such as irrigation systems, drainage systems, processing facilities, and other accessory facilities that are controlled by ADC;

# CHAPTER 5: RECOMMENDATIONS

- (C) An analysis and plan for how these lands can be used to increase local production to replace imported products in a manner that complements existing local producers and increases Hawaii's agricultural self-sufficiency; and
- (D) Strategies for federal, state, county, and community stakeholder actions that will promote the development and enhancement of Hawaii's agricultural industries.

ADC, in coordination with DOA, should update the Hawaii Agribusiness Plan every five years thereafter. All other statutory requirements for the Hawaii Agribusiness Plan should be repealed since these functions are currently performed by other agencies. However, DOA should work with the Legislature to increase its analysis of imported agricultural products;

- (5) ADC should develop goals, objectives, policies, and priority guidelines that articulate and outline an agribusiness development strategy. The goals developed for ADC's agribusiness development strategy should include specific one-, five-, and ten-year objectives and measurable outcomes. These objectives and measurable outcomes should have annual performance goals and measures upon which ADC can be evaluated annually to determine whether it is on track to meet the objectives and measurable outcomes. The Hawaii Agribusiness Plan should also include metrics, timeframes, and budget expectations as part of ADC's agribusiness development strategy;
- (6) By July 1, 2022, ADC should work with the Office of Planning and Sustainable Development or a consultant to draft a final plan;
- (7) The Legislature should appropriate \$100,000 for a consultant to assist in preparing and finalizing the Hawaii Agribusiness Plan, including the facilitation of community stakeholder involvement;
- (8) ADC, in coordination with DOA, should develop short- and long-range plans to help ADC tenants and surrounding properties;
- (9) ADC should prepare or coordinate the preparation of business and agricultural development plans, as provided by section 163D-7, HRS, for each project;
- (10) In general, DOA and ADC should work with the Office of Planning and Sustainable Development, or evaluate retaining consultants and other outside technical assistance, if necessary, to develop the Hawaii Agribusiness Plan, short- and long-term strategic plans, business and agricultural development

# CHAPTER 5: RECOMMENDATIONS

plans, and other tasks necessary to carry out the purposes of Chapter 163D, HRS;

- (11) ADC should submit a report of its plans and activities to the Legislature and Governor 20 days before each legislative session, as required by section 163D-19, HRS;
- (12) The ADC Board should be required to and continue its efforts to annually conduct performance evaluations of the Executive Director and staff and clarify the delegation of ADC Board authority to the Executive Director;
- (13) ADC should fill vacant staff positions with qualified persons in a timely manner. The vacant asset manager position should be funded;
- (14) The membership of the ADC Board should be amended by:
  - (A) Adding two additional members to be appointed by the Governor;
  - (B) Requiring that at least:
    - (i) Three board members have substantial experience in local food production;
    - (ii) One board member has substantial experience in organic and natural farming practices; and
    - (iii) One board member has demonstrated expertise in Native Hawaiian traditional and customary agricultural practices; and
  - (C) Requiring the Governor to consult with appropriate government and community agricultural stakeholders, such as the Office of Hawaiian Affairs, University of Hawaii West Oahu Sustainable Community Food Systems Program, Hawaii Farm Bureau, Hawaii Farmers Union United, Hawaii Organic Farmers Association, Hawaii Crop Improvement Association, and Hawaii Cattlemen's Council, when appointing board members.
- (15) By July 1, 2023, ADC should develop robust and detailed written policies and procedures on ADC board oversight, land and other ADC-owned property disposition application processes, property management, and file and document management in accordance with recommendation 18 under Audit Report No. 21-01. These robust and detailed written policies and procedures should also address:

# CHAPTER 5: RECOMMENDATIONS

- (A) The application process for the use of ADC's lands and other assets, including its process for evaluating applications;
- (B) ADC's administration and enforcement of the terms and conditions of licenses, permits, rights of entry, and other conveyance instruments, including those relating to inspections, notices of default, termination, eviction, and appeal rights;
- (C) Criteria and other procedures to create subsidiaries;
- (D) Criteria and other procedures for any coventure in qualified securities of an agricultural enterprise and to make direct investment in an agricultural enterprise;
- (E) Criteria and other procedures to exercise ADC's right of withdrawal from licenses, permits, and rights of entry;
- (F) When ADC must obtain affirmative approval from the BOA for agricultural projects, agricultural development plans, and project facility programs involving substantive matters or matters of public concern; and
- (G) Criteria and other procedures to apply and qualify for rent credits.

ADC should maintain, periodically update, and post on its website these written policies and procedures;

- (16) ADC should be required to hold its Board meetings with hybrid in-person and virtual participation allowed;
- (17) The Legislature should appropriate sufficient funds to enable virtual and remote participation in Board meetings;
- (18) ADC should create:
  - (A) An electronic database system that includes an inventory of ADC's lands, improvements, and other assets. The database should include all information reasonably necessary to manage those assets, such as the material terms of licenses, permits, rights of entry, and other agreements to use or occupy ADC assets; and should allow ADC to generate reports necessary for management of its assets, such as current tenant lists, vacancy rates, rent rolls, rent reopening dates, and license, permit, or right of entry termination dates; and

# CHAPTER 5: RECOMMENDATIONS

- (B) A filing system (or electronic document management system) that maintains documents in an organized manner and allows for the efficient retrieval of documents and/or files;
- (19) ADC should develop a standardized lease or license template that includes provisions to address environmental issues in the event environmental mitigation is needed. Specifically, ADC should be required to test the soils of all its lands and lessees and licensees should be required to remediate soil before vacating ADC lands or terminating the lease;
- (20) ADC should facilitate the establishment of a tenant agricultural cooperative association for its lands on Oahu, similar to the agricultural cooperative associations comprised of ADC tenants on Kauai. All tenants should be required to join and pay dues to the association, (similar to Common Area Maintenance). The association should be governed by a board of tenants of ADC lands and be responsible for security expenses;
- (21) Until a tenant agricultural cooperative association is established on ADC's Oahu lands, the Committee recommends that \$500,000 be appropriated for security of ADC's vacant property;
- (22) ADC should evaluate the need to procure insurance against loss in connection with ADC-owned properties, pursuant to recommendation 22 under Audit Report No. 21-01;
- (23) The ADC Board should attend training on the State's open meetings law (the Sunshine Law), and ADC should increase training on the Hawaii Procurement Code and property management, legal issues, and agriculture trends;
- (24) \$250,000 should be appropriated, if necessary, for a financial consultant to help ADC address any recommendations that may come from the financial audit scheduled to be completed by Accuity LLP pursuant to Act 29, SLH 2019;
- (25) An accountant position should be added to ADC to help manage its financial records moving forward;
- (26) The Office of the Auditor should immediately direct Accuity LLP to complete its financial audit of ADC and provide this audit to the Legislature; and
- (27) Funds should be appropriated to DOA to contract with an independent third-party auditing firm to perform an independent performance audit of ADC's Kauai land and water infrastructure portfolio beginning in 2024, after ADC has completed its follow up review with the Office of the Auditor and has had two

# CHAPTER 5: RECOMMENDATIONS

years to address the findings and implement the recommendations of Audit Report No. 21-01, as well as implement the recommendations set forth by this Committee.

## RECOMMENDATIONS RELATED TO THE OFFICE OF THE AUDITOR

- (1) The Office of the Auditor should: (1) update its 2014 *Manual of Guides* to be consistent with the most current version of the *Government Auditing Standards* issued by the Comptroller General of the United States; (2) publish its most updated *Manual of Guides* to the Office's website; (3) provide all contractors with a copy of the Office's *Manual of Guides*; and (4) ensure that all employees of the Office of the Auditor receive regular training to maintain best practices consistent with the *Government Auditing Standards* and require that new employees, especially those with limited government auditing experience, be trained in accordance with these *Standards*;
- (2) The Office of the Auditor should be required to provide audited agencies with a draft audit report that includes the Auditor's findings and recommendations at least 30 days before the exit interview;
- (3) Section 23-9.5, HRS, should be amended to require the Auditor to disclose information, evidence, and requested documents to investigative committees after audit reports have been issued;
- (4) Legislation should be passed to clarify that the Office of the Auditor is not allowed to shield documents from public disclosure, such as recorded interviews, when other safeguards or requirements are met under other laws that require or warrant disclosure;
- (5) Legislation should be passed to clarify that cooperation with a legislative investigative committee is not an ethics violation that jeopardizes a potential witness;
- (6) The Office of the Auditor should exercise a higher standard of professional judgment to avoid sensationalizing reports and making misleading or false statements and ensure that its audit reports are properly supported by sufficient and appropriate evidence;
- (7) The House of Representatives and/or Legislature should require the Office of the Auditor to submit reports to the Legislature on:
  - (A) The expenditure and/or lapsing of the \$1,000,000 appropriated for the audit work conducted pursuant to Act 1, Special Session Laws of Hawaii

# CHAPTER 5: RECOMMENDATIONS

2017, including any litigation costs involving disputes with any contractors hired by the Office of the Auditor pursuant to Act 1, by June 30, 2022; and

- (B) The outcomes and costs involving its dispute with BKD, LLP, including mediation and/or litigation costs and the agencies that paid for those costs, including the sources of funding, when the matter is resolved;
- (8) Further investigation of the Office of the Auditor should be conducted by an independent third party that can conduct a thorough performance audit of the Office of the Auditor;
- (9) The Department of the Attorney General should investigate questions and concerns raised in this Report;
- (10) The Legislature should establish greater collaboration with and oversight of the Office of the Auditor through the establishment of an Audit Committee similar to the audit committees described by the Charters of the City and County of Honolulu and the County of Kauai. This Audit Committee should have authority to advise the Auditor on the formulation of the plan of audits proposed to be conducted by the Auditor; conduct of audits; follow up of audits; selection of private contractors to perform audits for the Auditor; evaluation of preliminary audit findings and recommendations and agency, officer, or employee responses to the preliminary findings and recommendations; and evaluation of the Auditor's performance during each fiscal year. This Audit Committee should further require the Office of the Auditor to obtain approval for any litigation and identify the source of funding for the lawsuit; and
- (11) The Auditor should be required to consult with the relevant House and Senate subject matter chairs as part of the oversight body to better determine the scope of audits directed or requested by the Legislature, House of Representatives, or Senate.

## RECOMMENDATIONS RELATED TO FUTURE HOUSE CHAPTER 21 INVESTIGATIVE COMMITTEES

- (1) If a future Chapter 21 investigative committee is established to address broad, complex topics or long-standing issues, the investigative committee should be established to operate for a longer period of time, permitting the committee longer than seven months to investigate, deliberate, and submit its finding and recommendations to the House of Representatives;

## CHAPTER 5: RECOMMENDATIONS

- (2) Membership of future Chapter 21 investigative committees should comprise of subject matter chairs and vice-chairs related to the subject matter being investigated by the committee; and
- (3) The House of Representatives should consider establishing a formal standing committee that could work over the course of a legislative biennium to consider complicated topics of deep concern to the Legislature. The House of Representatives should examine the different types of investigative committees used by Congress and other state legislatures.



# CHAPTER 6: COMMENTS ON RESPONSES

## Chapter 6: Comments on Responses

The Committee appreciates the responses it received to the Draft Report from the various entities and subpoenaed witnesses involved. The Committee reviewed the responses and made changes to the Report to address certain comments. The following commentary is provided to address certain issues or statements raised in responses received by the Committee.

### Administration of DLNR

The Committee recognizes that concerns have been raised regarding DLNR Land Division's administration and that there are disputes regarding certain policy questions.<sup>261</sup> The Committee is making several recommendations to address the policy questions raised during its investigation (see "[Chapter 2: Special Land and Development Fund](#)"). However, the Committee finds that concerns regarding the performance of specific personnel should be addressed by DLNR executive management as the responsible employer with supervisory responsibilities over public employees.

The Committee recognizes that DLNR has begun to implement changes based on Audit Report No. 19-12 and that the recommendations made in this Report will further assist DLNR in its efforts.

### Unauthorized Disclosure of the Draft Report

The Committee notes that the Draft Report was provided to subpoenaed witnesses with a letter informing them that the Draft Report was only being made available to Committee members, designated Committee staff, subpoenaed witnesses, and their counsel and that any unauthorized disclosure of the Draft Report while the Committee is still completing its work would be considered a violation of Rules 4.4 and 4.5 of the Committee's Rules. In spite of this letter, the Committee received a response letter from Auditor Leslie H. Kondo on January 6, 2022, disclosing portions of the Draft Report to all members of the House of Representatives and Senate. This disclosure was unauthorized and raises concerns that Auditor Kondo, the general counsel for the Office of the Auditor, and the attorney hired to represent the Office of the Auditor may not have complied with the letter and rules of the Committee. The Committee notes that a violation of Rule 4.4 of the Committee's Rules, which is based on section 21-12(h), HRS, may be punishable by a fine of no more than \$500 or imprisonment of

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<sup>261</sup> See [Appendix D: Keith Chun Response to Draft Report](#).

# CHAPTER 6: COMMENTS ON RESPONSES

no more than six months, or both, pursuant to section 21-15, HRS.<sup>262</sup> The Committee also finds that the disclosure may be considered an ethics violation pursuant to section 84-12, HRS.<sup>263</sup>

## Criticism of the Draft Report's Completeness

Auditor Kondo's response letter dated January 6, 2022, and response to the Committee's Draft Report criticized the Draft Report as incomplete. The Office of the Auditor again attempts to mislead readers by faulting the Committee's work for not being in compliance with auditing requirements or the Auditor's idea of what a Draft Report should be or include. This Committee operates pursuant to Chapter 21, HRS, and its rules. It is not subject to auditing requirements nor Auditor Kondo's opinions. The Committee emphasizes that the Draft Report provided to subpoenaed witnesses was a *draft* report. There were still open questions that the Committee needed to discuss and agree upon when it issued its Draft Report. The Committee's findings are the conclusions it reached based upon its investigation of documents, its hearing of witness testimony, and its research (see definition of "findings").

## Legislative Oversight of the Office of the Auditor

In its response to the Committee's Draft Report, the Office of the Auditor claims that its Office "is established via Constitution to be independent from the legislative body."<sup>264</sup> This statement is false. Not only does the Legislature have the power to appoint and remove the Auditor, part of the Auditor's constitutionally required duties include reporting its findings and recommendations to the Legislature at such times as shall be provided by law and making additional reports and conducting other investigations as may be directed by the Legislature.<sup>265</sup> Therefore, "[t]he constitutional role of the auditor is neither directly subordinate to, nor completely independent of, the legislature."<sup>266</sup>

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<sup>262</sup> [HRS §21-15](#); see [HRS §21-12](#); [Rule 4.4 of the Committee's Rules](#).

<sup>263</sup> [HRS §84-12](#).

<sup>264</sup> [Appendix D: Office of the Auditor Response to Draft Report, p. 31](#).

<sup>265</sup> [HI Const. art. VII, §10](#).

<sup>266</sup> [Honolulu Civil Beat Inc. v. Dep't of Attorney Gen., 146 Hawai'i 285, 297, 463 P.3d 942, 954 \(2020\)](#).

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[Appendix C: Closing Statements of Audited Agencies](#)

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[Appendix J: Unredacted Email from Keith Chun to DLNR Personnel Officer \(Dated June 22, 2016\)](#)

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## APPENDIX A: BRIEF SYNOPSIS OF HEARINGS

Date of Hearing	Name and Title of Witness	Subject of Testimony
September 13, 2021	Leslie H. Kondo, State Auditor	Audit of the Department of Land and Natural Resources' Special Land and Development Fund, Report No. 19-12
September 14, 2021	<ul style="list-style-type: none"> <li>• Suzanne D. Case, Chairperson of the Board of Land and Natural Resources</li> <li>• Russell Y. Tsuji, Land Administrator of the Department of Land and Natural Resources</li> <li>• Kevin E. Moore, Assistant Administrator of the Department of Land and Natural Resources</li> <li>• Ian C. Hirokawa, Special Projects Coordinator at the Department of Land and Natural Resources</li> </ul>	The Department of Land and Natural Resources' analysis of and response to the Audit of the Department of Land and Natural Resources' Special Land and Development Fund, Report No. 19-12
September 20, 2021	Leslie H. Kondo, State Auditor	Audit of the Agribusiness Development Corporation, Report No. 21-01
September 21, 2021	<ul style="list-style-type: none"> <li>• James J. Nakatani, Executive Director of the Agribusiness Development Corporation</li> <li>• Myra M. Kaichi, Senior Executive Assistant of the Agribusiness Development Corporation</li> <li>• Ken Nakamoto, Project Manager at the Agribusiness Development Corporation</li> </ul>	The Agribusiness Development Corporation's analysis of and response to the Audit of the Agribusiness Development Corporation, Report No. 21-01
	Leslie H. Kondo, State Auditor	Audit of the Agribusiness Development Corporation, Report No. 21-01
September 23, 2021	Phyllis Shimabukuro-Geiser, Chairperson of the Board of Agriculture	The Department of Agriculture's analysis of and response to the Audit of the Agribusiness Development Corporation, Report No. 21-01
October 20, 2021	Ronald Shiigi, Former Administrative Deputy Auditor	Detection of and response to potential mismanagement,

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		malfeasance, fraud, and/or auditing irregularities identified by the Office of the Auditor
	Suzanne D. Case, Chairperson of the Board of Land and Natural Resources	Misconduct found and prosecuted pursuant to Attorney General Report No. 16-5227 and the measures taken by the Department of Land and Natural Resources in response to Attorney General Report No. 16-5227
October 21, 2021	Keith Chun, Former State Land Planning & Development Manager, Land Division, Department of Land and Natural Resources	Management, oversight, and disposition of public lands by the Department of Land and Natural Resources
	<ul style="list-style-type: none"> <li>James J. Nakatani, Executive Director of the Agribusiness Development Corporation</li> <li>Myra M. Kaichi, Senior Executive Assistant of the Agribusiness Development Corporation</li> </ul>	Management, oversight, and disposition of public lands held by the Agribusiness Development Corporation on the island of Kauai
October 28, 2021	Randal K.O. Lee, Esq.	Whether the Auditor and/or the Office of the Auditor omitted in its audit process, findings, and recommendations any detections of noncompliance with laws, regulations, contracts, or grant agreements that were potentially significant within the context of the work contracted for by the Office of the Auditor.
	Edwin S.W. Young	The applicability of the <i>Government Auditing Standards</i> ("Yellow Book Standards") by the Comptroller General of the United States to the audits and matters being examined and investigated by the Committee.
November 17, 2021	<ul style="list-style-type: none"> <li>Mary Alice Evans, Ex-Officio Member of the Agribusiness Development Corporation Board of Directors</li> </ul>	<ul style="list-style-type: none"> <li>The response and follow up by the Agribusiness Development Corporation Board of Directors to the Audit of the Agribusiness</li> </ul>

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	<ul style="list-style-type: none"> <li>M. Kaleo L. Manuel, Ex-Officio Member of the Agribusiness Development Corporation Board of Directors</li> </ul>	<p>Development Corporation, Report No. 21-01; and</p> <ul style="list-style-type: none"> <li>The ongoing operations, management, and oversight of the Agribusiness Development Corporation.</li> </ul>
November 18, 2021	<p>Frederick Lau, Chairperson of the Agribusiness Development Corporation Board of Directors</p>	<ul style="list-style-type: none"> <li>The response and follow up by the Agribusiness Development Corporation Board of Directors to the Audit of the Agribusiness Development Corporation, Report No. 21-01; and</li> <li>The ongoing operations, management, and oversight of the Agribusiness Development Corporation.</li> </ul>
	<ul style="list-style-type: none"> <li>Scott Enright, Former Chairperson of the Board of Agriculture</li> <li>Joshua Uyehara, Board Chairperson of the Kekaha Agriculture Association</li> <li>Michael Faye, Manager of the Kekaha Agriculture Association</li> </ul>	<ul style="list-style-type: none"> <li>The findings and recommendations set forth in the Audit of the Agribusiness Development Corporation, Report No. 21-01;</li> <li>The past operations, management, and oversight of the Agribusiness Development Corporation; and</li> <li>The ongoing operations, management, and oversight of the Agribusiness Development Corporation.</li> </ul>

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November 29, 2021	<ul style="list-style-type: none"> <li>• Christopher Yuen, Member of the Board of Land and Natural Resources</li> <li>• Vernon Char, Member of the Board of Land and Natural Resources</li> </ul>	<ul style="list-style-type: none"> <li>• The response and follow up by the Board of Land and Natural Resources to the Audit of the Department of Land and Natural Resources' Special Land and Development Fund, Report No. 19-12; and</li> <li>• The ongoing operations, management, and oversight of the Land Division of the Department of Land and Natural Resources.</li> </ul>
December 15, 2021	Ross R. Murakami, Partner at KMH LLP	Provide information about the financial record keeping, procedures, and processes of the:
January 10, 2022		<ul style="list-style-type: none"> <li>(1) Department of Land and Natural Resources as related to DLNR's Special Land and Development Fund; and</li> <li>(2) Agribusiness Development Corporation.</li> </ul>

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## APPENDIX B: LIST OF SUBPOENAS DUCES TECUM ISSUED BY THE COMMITTEE

Entity Subpoenaed	Date of Subpoena	Date of Production	Hyperlink
Department of Land and Natural Resources	July 23, 2021	August 9, 2021	<a href="#">DLNR SDT 1</a>
	August 13, 2021	August 30, 2021	<a href="#">DLNR SDT 2</a>
	September 29, 2021	October 15, 2021	<a href="#">DLNR SDT 3</a>
	October 6, 2021	October 18, 2021	<a href="#">DLNR SDT 4</a>
Agribusiness Development Corporation	July 23, 2021	August 9, 2021	<a href="#">ADC SDT 1</a>
	August 13, 2021	September 7, 2021	<a href="#">ADC SDT 2</a>
	September 29, 2021	October 1, 2021	<a href="#">ADC SDT 3</a>
	September 29, 2021	October 15, 2021	<a href="#">ADC SDT 4</a>
	October 6, 2021	October 20, 2021	<a href="#">ADC SDT 5</a>
	November 8, 2021	November 12, 2021	<a href="#">ADC SDT 6</a>
	January 13, 2022	January 14, 2022	<a href="#">ADC SDT 7</a>
Department of Agriculture	July 23, 2021	August 9, 2021	<a href="#">DOA SDT 1</a>
	August 13, 2021	August 30, 2021	<a href="#">DOA SDT 2</a>
	September 29, 2021	October 1, 2021	<a href="#">DOA SDT 3</a>
	September 29, 2021	October 13, 2021	<a href="#">DOA SDT 4</a>
	October 6, 2021	October 13, 2021	<a href="#">DOA SDT 5</a>
Office of the Auditor	September 29, 2021	October 13, 2021	<a href="#">Auditor SDT 1</a>
Department of the Attorney General	October 6, 2021	October 8, 2021	<a href="#">AG SDT 1</a>
Randal K.O. Lee, Esq.	October 21, 2021	October 27, 2021	<a href="#">Lee SDT 1</a>
Department of Accounting and General Services	December 15, 2021	December 22, 2021	<a href="#">DAGS SDT 1</a>
KMH LLP	January 11, 2022	January 14, 2022	<a href="#">KMH SDT 1</a>



## APPENDIX C: CLOSING STATEMENTS OF AUDITED AGENCIES

### DLNR Closing Statement



DAVID Y. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU HAWAII 96809

December 22, 2021

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

The Honorable Della Au Belatti  
Representative, House District 24  
The Thirty-First Legislature  
Hawaii State Capitol, Room 439  
415 S. Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Belatti, Vice Chair Ichiyama and Members of the Committee,

Thank you for the opportunity to provide a written closing statement to this Investigative Committee (Committee).

The Department of Land and Natural Resources (“Department”) appreciates the Committee’s efforts to understand and address the many important and complex issues facing the Department, the Department’s efforts to address the findings and recommendations of the audit of the Special Land Development Fund (“SLDF”), once provided, and public policy nuances that frame the Department’s work. Although the Department has objected to portions of the findings and conclusions reached in the SLDF audit report, it also acknowledges the value in some of the audit’s suggestions and has already taken steps to improve the Department’s procedures and operations. The Department further reiterates its commitment to work with the Committee and the Legislature in its steadfast efforts to best manage public lands under its control.

In order to address the issues raised during the Committee’s recent discussions with the Department, the Department will prioritize the following items as we move into the calendar year 2022:

- **Planning.** The Department is in the early stage of the development of a strategic plan for management of public lands that intends to address broader environmental and economic sustainability goals and not be limited solely to maximizing revenue.
- **Legislation.** The Department will also work with the House and Senate Water and Land committees on legislation to improve our leasing process, such as providing greater opportunities for direct leasing and ensuring more consistency in the application of lease extension statutes, which is discussed further below.
- **Financial Accountability.** The Department will continue its self-initiated practice of conducting internal financial audits at regular intervals to provide an independent third-party review.

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The Honorable Della Au Belatti  
Representative, House District 24  
December 22, 2021  
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- Ceded Land Revenues. The Department has confirmed with the Department of the Attorney General that depositing ceded land revenues into the SLDF to support Department programs is consistent with the Admissions Act, Section 171-19, Hawaii Revised Statutes, and the Department's public trust obligations, and has full confidence in the advice received on this matter.
- Leasing Practices. The Department will continue to evaluate, where beneficial to the State and consistent with industry financing practices, proposing for consideration by the Board of Land and Natural Resources (Board) longer term, known fair market value rent periods for larger tenants and future developments that will require significant investment in infrastructure and improvements. In discussions with commercial real estate consultants, establishing a long term, known rent period subject to regular step ups provides greater stability and consistency and increases the potential for a successful development.
- Maintenance of Records. The Department will continue to work with the Department of the Attorney General to complete the expungement of the fraudulent easement document.

The Department believes that changing the current general practice of issuing and extending ground leases pursuant to statutory authorization, to a different practice of allowing existing leases to expire, assuming ownership of the improvements, and then issuing space leases, is not properly justified. There are numerous factors that are carefully considered and evaluated by the Board when reviewing a request for a lease extension. These include the age, value, and condition of the improvements, what the lease provides with respect to ownership of improvements at lease expiration, the value of any proposed upgrades to the improvements, the fair market rent charged for the ground lease, the tenant's payment/default history, and whether the land should be put to a higher and better use. On some of the older leases issued in the early 1960s, ownership of the improvements defaults to the State at lease expiration pursuant to the terms of those instruments (*i.e.*, the State is responsible for the improvements regardless of the condition of the improvements). The Department is careful to assess the quality of the improvements, though, because not all improvements provide value. Rather, if an improvement is in poor condition, it becomes a liability to the State, who must assume responsibility for rehabilitation or demolition upon lease expiration. An across-the-board shift to space leasing ignores these considerations.

As discussed with the Committee, the Department has observed that statutory differences arising out of the various legislative acts amending criteria for and authorizing lease extensions have led to some challenges in the Department's implementation of them. For example, a 2011 Act (Act 219, Sess. L. Haw. 2011) applied only to hotel and resort leases and specifically required any lease extension to be based on the most current lease form and leasing practices and policies of the Board. The leases that have been extended pursuant to Act 219 were accordingly updated, as provided by the Act. The other lease extension acts did not include this express language. As another example, the Department of the Attorney General has determined that a 2018 law (Act 149, Sess. L. Haw. 2018) and related case law operates to allow for the updating of directly negotiated leases. That law does not, however, allow the Department to update the terms of leases that were issued through the public auction process. This may also be

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The Honorable Della Au Belatti  
Representative, House District 24  
December 22, 2021  
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the case for lease extensions under last year's amendment (Act 236, Sess. L. Haw. 2021). These acts lead to disparate results for lessees seeking extensions depending on how their leases were initially issued. The Department's Land Division would prefer to treat all lease extension requests uniformly so that the leases the Board approves for extension are updated to the Board's current form, practices, and policies. Such action may require further legislative amendments of the acts, which the Department would expect some of the State's lessees to oppose.

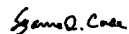
Finally, the Department acknowledges the benefits of audits generally. Indeed, as mentioned above, we are committed to continuing our practice of annual self-audits, which have occurred since 2017. However, the Department believes there are opportunities to improve the legislative audit process, which would provide greater transparency and accountability and would help to ensure compliance with statutory requirements as enacted by the Legislature.

For example, Act 209, Session Laws of Hawaii 2017 defined the scope of the SLDF audit as whether the funds that were expended by the SLDF for contracts, grants and memoranda of understanding awarded between July 1, 2015 and June 30, 2017 complied with laws and in accordance with the terms of the contracts, grants and memoranda of understanding and whether contractors and awardees were adequately screened and qualified. The Department fully complied with the Auditor's initial request for information by providing a list of all relevant contracts for the audit period. However, the Department was never informed as to any findings by the Auditor with respect to the scope as enacted in Act 209, nor did the audit report include any discussion of that issue.

The Department also believes it would be beneficial to agencies, the Legislature, and the public, for audits to identify areas of good financial and programmatic management in the audit findings.

The Department welcomes any future opportunities to consult with members of this Committee (or the rest of the Legislature) on future statutory improvements to help manage State lands under the Department's control.

Sincerely,



*RT*

Suzanne D. Case  
Chairperson

## ADC Closing Statement

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



JAMES J. NAKATANI  
Executive Director

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CLOSING STATEMENT OF JAMES J. NAKATANI  
EXECUTIVE DIRECTOR  
AGRIBUSINESS DEVELOPMENT CORPORATION

BEFORE THE HOUSE INVESTIGATIVE COMMITTEE TO INVESTIGATE COMPLIANCE  
WITH AUDIT NOS. 19-12 & 21-01

Chairperson Belatti, Vice Chair Ichiyama, and Members of the Investigative Committee:

Thank you for the opportunity to present this closing statement. Thank you, also, for the opportunity to provide presentations and testimony to further the purposes of this Committee, that is, to follow up on Agribusiness Development Corporation's ("ADC") audit report, to examine the recommendations made by the legislative auditor for the purpose of improving the operations and management of ADC and its funds, and any other matter.

### I. ONGOING LITIGATION

First, as stated in its response to Audit Report No. 21-01 ("Report"), ADC reiterates its position that including a plaintiff's allegations in a pending lawsuit against ADC in the Report as a criticism of ADC's policy was inappropriate, particularly when, as adduced in testimony before this Committee, other examples of the same policy could have easily been cited for the same purpose. Alternatively, removing plaintiff's name would have accomplished the same purpose without directly impacting the ongoing litigation. Reporting allegations as though they were established facts in a pending lawsuit where plaintiff carries the burden of proving its claims was irresponsible. It allows the plaintiff the opportunity to assert its allegations as 'facts' and gives them greater weight because they were included in a public government document. This is precisely the situation that ADC now faces. The plaintiff in the ongoing lawsuit devoted in excess of an entire page of "facts" in the Statement of Facts section of its Pretrial Statement, often quoting statements, *verbatim*, from the Report to support its claims. Plaintiff cited the Report as the basis for these 'facts'.<sup>1</sup>

<sup>1</sup> In response to this Committee's questions on the appropriateness of including matters which are the subject matter of ongoing litigation in its Report, the Auditor responded, "we reported about *facts*. We didn't report about whether or not we agreed with [the Plaintiff's] position or even ADC's position. We reported *facts*. We reported information that came out of [the Plaintiff's] attorney's letters to ADC. Those are *facts*. That does not in any way, or at least in my mind, jeopardize or somehow interfere with ADC's ability to defend itself. In fact, those are those documents are public documents that would have [been] available to any member of the public upon request." (HIC21 – Sep 20 @ 9am HST, YouTube, uploaded by Hawaii House of Representatives, September 20, 2021, [www.youtube.com/watch?v=ntYRv5DXLJM](https://www.youtube.com/watch?v=ntYRv5DXLJM) at 2:57:30, *emphases placed on "facts" by Auditor in italics.*)

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ADC now faces a more difficult defense of the claims in this pending lawsuit due to the Legislative Auditor's assertion that the plaintiff's allegations were facts. Discussing ongoing litigation in the Report was detrimental to the agency and not necessary. The sensationalist nature of the Report also brought into question its professionalism, integrity, and credibility.

## II. THE AUDIT REPORT TIMING

As adduced at the hearings of this Committee, the ADC audit officially began when ADC received a letter from the Auditor dated June 18, 2019. Field work concluded in March 2020. ADC received a draft of the Report via email nine months later, on December 23, 2020. ADC was given a deadline to transmit a response to the Report by January 7, 2021, and an exit conference was scheduled for January 6, 2021, one day before ADC's response was due. Excluding weekends and holidays, ADC was effectively afforded nine working days, two of which were Christmas Eve and New Years' Eve, within which to prepare and serve a response to the Report. Significantly, ADC was only given one day after its exit meeting with the Auditor in which to make any final changes to its response.<sup>2</sup>

By contrast, the Auditor allowed himself nine months in which to conduct his independent review and prepare a draft report<sup>3</sup>, testifying that the pandemic was upon him and that he was doing other things such as looking at old special fund reports as the reason for such delay. During this time, he put the ADC Report "on ice." He also cannot provide a date when work restarted on the ADC Report, thereby ensuring that no one would be able to calculate how long the ADC Report sat idle, burning precious time before it was finally provided to ADC to review, vet, analyze, confer with Board members, and draft its response.<sup>4</sup> The Auditor stressed that ADC did not request an extension of time within which to respond. However, as ADC testified, the Auditor had explained to ADC that the Report would not be changed in any way by any response ADC provided and it did not appear that any request for an extension would be granted.<sup>5</sup>

<sup>2</sup> Additionally, ADC's fiscal officer retired effective December 30, 2020, and although not directly related to the performance audit, her retirement added yet another high priority task that ADC had to deal with quickly, as well as take over all routine calendar year-end and second quarter fiscal reports at, or around, this time.

<sup>3</sup> In his testimony, the Auditor testified that "the independent review process generally takes about a week, sometimes longer." (HIC21 – Sep 20 @ 9am HST, *You Tube*, uploaded by Hawaii House of Representatives, September 20, 2021, [www.youtube.com/watch?v=ntYRv5DXLfm](http://www.youtube.com/watch?v=ntYRv5DXLfm) at 37:45).

<sup>4</sup> The Auditor has also refused to provide the date that the independent review of the Report started and ended, going only so far as to acknowledge the request for a response, but sometimes inferring that such information is protected as "work papers" and other times stating that he didn't know the answer. (HIC21 – Sep 21 @ 2pm HST, *You Tube*, uploaded by Hawaii House of Representatives, September 21, 2021, [www.youtube.com/watch?v=br5ftMdqusk](http://www.youtube.com/watch?v=br5ftMdqusk) at 45:00)

<sup>5</sup> The Auditor refutes that he said there would be no changes to the Report. However, he also refuses to provide ADC or this Committee with copies of the taped discussions in which he made these statements, again ensuring that no one will know whether ADC's recollection of events is accurate. According to the Auditor, the tapes are protected "working papers". Similarly, the Auditor has refused to provide the tapes of the interviews of ADC staff to them but has provided no explanation to ADC why the Board of DLNR's Chair Suzanne Case's tapes were provided to her. It is ADC's understanding that Chair Case requested a copy of her tapes or the transcripts therefrom at the time of her interview. ADC can find no authority for the proposition that the timing of a request for tapes determines whether such tapes are "working papers" or are otherwise confidential.

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In addition to the timing of the Report's release, ADC's response was impaired by the draft Report's lack of the 33 recommendations which ended up in the Final Report. ADC was not privy to the recommendations until the Final Report was issued. At the time that ADC participated in its exit interview, all it knew about were the 3 summarized Findings which are stated quite broadly and in general.<sup>6</sup> The 33 recommendations were only added to the Final Report.

This was ADC's first audit, and the process was a learning experience for the agency. It brought to light some shortcomings which the ADC has been and will continue to work hard to address. If done in a professional manner, the audit can be a valuable means by which the Legislature can oversee and assist governmental agencies in their work.

### III. ADC'S PROGRESS AFTER THE AUDIT REPORT

As shown throughout these proceedings, ADC has already made significant progress towards improving its operations. ADC developed a matrix categorizing the recommendations contained in the Report into three "buckets"—high level executive tasks, operational administrative tasks, and other miscellaneous tasks. Each item within a bucket was then listed in the order of significance or priority. Items that have been accomplished at the time of ADC's first hearing before this Committee on September 21, 2021, were darkened. Also, ADC has continued to address these issues.

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<sup>6</sup> Those summarized findings were as follow:

Summary of Findings

1. More than 25 years ago, the Agribusiness Development Corporation was created to develop an "aggressive and dynamic" agribusiness development program to fill the economic void created by the closure of the sugar and pineapple plantations; the agency has done little to fill the void.
2. ADC's land management struggles – inconsistent, incomplete, and, in many cases, non-existent record keeping; prospective tenants occupying lands without signed written agreements; and persistent criminal activity on its properties – expose the State to unnecessary risk.
3. ADC's Board of Directors provides minimal guidance and oversight to the corporation

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**ADC Audit Recommendations Priorities**  
*\* Item numbers correlate to Auditor's recommendations; refer to matrix*

Executive In order of priority	Administrative In order of priority	Other In order of priority
1. Update and revise mission statement	14. Evaluate retaining consultants and other outside technical assistance	11. Prepare, and revise as required, the Hawaii Agribusiness Plan
2. Develop goals, objectives, policies, and priority guidelines for an agribusiness development strategy	21. Evaluate the retention of a private property management company	17. Twenty days before legislative session, submit a report to the Legislature and Governor
9. Develop proposals to improve data collection of market demands	26. Fill vacant staff positions	3. Develop an inventory of agricultural lands with adequate water resources
12. Prepare short- and long-range strategic plans	20. Create a filing system (or electronic document management system)	4. Develop an inventory of agricultural infrastructure
10. Develop strategies for federal and state legislative actions	19. Create an electronic database	23. Evaluate the need to procure insurance
6. Develop financial and other programs	18. Develop written policies and procedures	8. Develop strategies to ensure adequate air and surface transportation services and associated facilities
13. For each project, prepare business and agricultural development plans	24. Obtain an opinion from the State Procurement Office	15. Obtain and document approval by the Board of Agriculture before project implementation
7. Develop feasible strategies for the promotion, marketing and distribution of crops and products	25. Attend training on the Hawaii Procurement Code, Chapter 103D, HRS	16. Obtain from the Board of Agriculture its policies and procedures for approval of ADC's projects
5. Prepare an analysis of imported agricultural products	27. Develop and document annual performance goals and measures for each staff	22. Promulgate administrative rules to address the application process for ADC lands and other assets
	28. Evaluate each staff's performance annually	

## A. ADC'S MISSION STATEMENT

At its duly noticed meeting on August 25, 2021, the ADC Board of Directors approved its existing mission statement, to wit: "To acquire and manage, in partnership with farmers, ranchers, and aquaculture groups, selected arable lands, water systems and infrastructure for commercial agricultural use, and to direct research into areas that will lead to the development of new crops, markets, and lower production costs."

## B. ADC'S GOALS, OBJECTIVES, POLICIES AND PRIORITY GUIDELINES

ADC's understanding of this item was not so much that ADC "develop", but that it revisit and update these goals and objectives every year in its report to the legislature as required under Act 100.<sup>7</sup> Also, at its meeting on August 25, 2021, the Board discussed the top priorities that ADC needed to establish before it was able to move forward, noting that among these critical components were the strategic plan<sup>8</sup>, goals, objectives, inventory records, and financial soundness. The Board approved the priority list as developed<sup>9</sup> and agreed to provide assistance to these ends by forming smaller

<sup>7</sup> As an attached agency, ADC's Act 100 Report is included in the Department of Agriculture's report and is submitted to the Legislature by the Department.

<sup>8</sup> The strategic plan is referred to as the "Hawaii agribusiness plan" in Hawaii Revised Statutes §163D-5.

<sup>9</sup> The ADC board visited its current goals and objectives at its duly noticed meeting on April 28, 2021.

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committees to vet preliminary issues that create challenges to improvements. It also authorized the Executive Director to draft terms of reference for consultants to assist with a Hawaii agribusiness plan to be approved by the Board at a later date. The approved goals and objectives are as follows:

<p>Goal 1: Acquire and develop productive agricultural lands for agricultural development.</p>	<p>Goal 2: Assure the continued availability of adequate, reasonably priced water to lands to accommodate present and future agricultural activities.</p>	<p>Goal 3: To improve the productivity of agriculture operations by providing brick and mortar facilities, as needed, and promote efficient profitability by enticing the development of applied research and innovation on State lands and in State owned facilities.</p>
<p>Objective 1: To maximize utilization (100% occupancy) of ADC agricultural land resources for diversified agribusiness.</p>	<p>Objective 1: To develop a master irrigation plan which incorporates system development, watershed management, and recycled water.</p>	<p>Objective 1: To identify and deploy viable new techniques and tools to improve crop and livestock yield and marketability.</p>
<p>Objective 2: To implement the State's goal to double local food production and consumption.</p>	<p>Objective 2: To maintain and improve the efficiency of existing irrigation systems.</p>	
<p>Objective 3: To reduce food imports.</p>	<p>Objective 3: To expand agricultural water resources.</p>	
<p>Objective 4: To acquire and make agricultural lands available for production.</p>		
<p>Objective 5: Educate the public on the importance of local agriculture and farming to our state and economy and food supply during the COVID-19 pandemic.</p>		



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## C. OTHER RECOMMENDATIONS TO THE ADC

Because the ADC's Property Manager position is typically a union position, outsourcing such services had been extremely difficult, but ADC crafted a scope of work that did not offend the union description and was allowed to outsource the services. Finally, in January 2020, ADC found a qualified and competent in-house property manager. Thus, as of August 5, 2021, all of ADC's funded positions are fully staffed. There is one vacant position, however, that is currently unfunded, and cannot be filled.<sup>10</sup> The procurement training recommendation was actually met, and indeed must be met before any procurement will be approved. The Hawaii Agricultural Plan and the Annual Reports were submitted to the Legislature in the 2021 session.<sup>11</sup> The recommendation to develop a financial program was duplicative of the Department of Agriculture's ("Department") Agricultural Loan Division. Indeed, as of September 2021, 13 of the 28 recommendations had been accomplished to some extent, and many of them have since been completed in full.

## D. UPDATES ON RECOMMENDATIONS TO THE ADC

Since September, ADC has selected a vendor and sent a request to the Governor to approve the procurement of a documents management platform and consultant to assist ADC with a filing system and electronic database (Administrative bucket, recommendations 20 and 19), which is pending approval. At the November 2021 ADC board meeting, the challenges that the policy committee faced were discussed including the breadth of scope of policies, the particular expertise required of other policies, and the departure of two board members on the committee. The ADC board disbanded the existing policy committee and created a new committee, hopefully one that will be able to learn from the difficulties suffered by the prior committee, and incorporate the

<sup>10</sup> Although testimony elicited indicated that ADC's vacant position is a planner position, the current unfunded ADC position is for an asset manager.

<sup>11</sup> As ADC Chairperson Frederick Lau testified, details which could appropriately be included in updates to the 2021 Hawaii agribusiness plan could include:

1. License vacant lands (January 2022){ 4 of 5 Paalaa Uka, Oahu parcels approved, the land investigative committee's recommendation to license the 5th parcel was adopted at the ADC November, 2021 duly noticed Board meeting, and is scheduled to be heard for approval of a land license at the first ADC board meeting in 2022.}
2. Farmers to start production (mid-2022){Rights of entry granted to the 4 approved tenants, ADC and tenants are working with the USDA, Natural Resources Conservation Service to expedite soil conservation plans to enable the tenants to start clearing and tilling lands.}
3. ADC Board to prepare and adopt written policies and procedures (mid-2022){Policy committee was formed at ADC November board meeting.}
4. ADC to form a committee to further detail the 2020 Strategic Plan (end of 2022){Consider hiring an outside consultant for assistance.}
5. ADC tenants form a tenant association to participate in the maintenance, security, pump, and water delivery (Largely dependent upon tenants' participation.}
6. Promote the KAA 500-acre small, diversified agriculture program in Kekaha.

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comments and concerns gleaned from the public, these proceedings, and from the Auditor's Report.

The ADC board discussed the Hawaii Agribusiness Plan. There was consensus that the goals and objectives approved in August will provide a strong foundation for the plan, and that the existing Plan submitted to the Legislature in 2021 can be improved with more detail. ADC anticipates further discussion and direction on the Hawaii Agribusiness Plan during 2022. Finally, at the Department of Agriculture's Board meeting on November 30, 2021, ADC provided an update of its accomplishments during 2021. ADC will continue to provide these updates annually.

#### E. RECOMMENDATIONS TO THE BOARD OF THE ADC

Testimony elicited from ADC board members demonstrated that the Board indeed has performance measures against which the Executive Director was evaluated and has, in fact, conducted such evaluations in the past. The Board's delegation to the Executive Director that he may issue rights of entry is a legitimate delegation and not a lack of oversight by the Board. Also, the Board is currently vetting the policies on credits and other recurring requests from tenants through its policy committee.

#### F. CONCERNS OF THE COMMITTEE

This Committee has raised concerns over chemical contaminations and the usefulness of baseline inspections and inspections at the end of a lease term to more accurately identify contaminations that occur during a particular tenant's term. As indicated during the ADC Kauai lands portions of these proceedings and evidenced by documents produced herein, ADC land licenses and leases include provisions that require the tenant to comply with all federal state and local laws, including a specific provision pertaining to Chapter 343, Hawaii Revised Statutes, pertaining to possible requirements of an environmental impact statement or environmental assessment for certain actions taken on state lands. ADC's land documents also provide that ADC may require a tenant to secure a Level One Hazardous Waste Evaluation and a complete abatement and disposal program that meet the standards of the Environmental Protection Agency.<sup>12</sup> In the two instances to date in which ADC land tenures have terminated, ADC inspected the premises affected, and made the determination that no environmental site assessment was warranted. ADC will visit the requirement of a baseline study and will work with legal counsel on how to establish a baseline report for existing tenants as a matter of contract law. Preliminary discussion with existing ADC tenants is promising, in that such a baseline protects both the tenants and ADC, and most important of all, records all contaminations during a finite period of time. Such actions should hopefully also encourage even better land stewardship, although ADC

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<sup>12</sup> This process is more commonly referred to as a Phase I Baseline Report or sometimes referred to as an environmental site assessment. This is one of the few requirements of the ADC land documents that survives the termination of the tenant's tenure on ADC lands.

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believes most of its Kauai tenants are among the best land stewards of all of ADC's tenants.

This Committee also noted the success of the agricultural cooperative association in Kekaha as an ADC partner and raised the possibility of using the cooperative partnership as a model for other swaths of ADC farmlands. As ADC showed in its Kauai presentation, the success of such a cooperative is largely dependent upon the tenants themselves, their financial capabilities, and whether they are full-time or weekend farmers. In one region, the larger farmers are full-time farming operations with corporate financial backing. That cooperative is very successful. On the other side of the island, the farms tend to be small, family-run farming and ranching operations. Those farmers and ranchers hold full-time non-farming jobs and are only able to tend to their farms and ranches only after their full-time work, and on weekends and holidays. Some tenants are retired and tend to their operations as they can. ADC agrees that these types of partnerships, properly created and maintained, can be a huge benefit to both ADC and its tenants. Some preliminary investigations into partnerships for ADC's Oahu lands have been conducted but thus far, there is no one farmer that has been willing or able to take control and organize the group. Forcing a group to work together rarely succeeds, and ADC is considering incentives that might change the Oahu farmers' attitudes and willingness towards partnering with ADC.

#### IV. AMENDMENTS TO CHAPTER 163D, HAWAII REVISED STATUTES

This is the first performance audit ever conducted on ADC since its inception. It was a tremendous endeavor, but it also provided a vehicle through which ADC can address problems with its operations and ADC's enabling statute. One of the issues repeatedly raised was the role of ADC and the Department. There exists a duplication of tasks for financing, marketing, data gathering, and analysis. These duplications should be removed from Chapter 163D to avoid further criticism. ADC can always participate with the Department on these studies without a statutory mandate.<sup>13</sup> There was some discussion on the propriety of requiring ADC to analyze imports and import replacements and to promote and market export crops. While imports and exports analyses and promotions are an integral part of agribusiness, these tasks require data, and should be done in conjunction with the Department, and possibly with the Department of Business and Economic Development and Tourism. Chapter 163D could be amended to make clear that this type of analysis and promotion must be conducted, if at all, by ADC with data gathered and analyzed by and between these departments.<sup>14</sup>

<sup>13</sup> There was some discussion of pesticide regulation in the course of these proceedings; however, pesticide regulation is solely under the mandate of the Department. ADC defers to and refers all pesticide use violations and oversight to the Department, particularly violations by ADC tenants.

<sup>14</sup> A great deal of discussion in these proceedings focused on ADC's ability to adequately secure its lands. Security of agricultural lands is a problem for all farmers, both public and private. The State is in dire need of an agricultural law enforcement agency, similar to the Division of Conservation and Resource Enforcement (DOCARE) within the Department of Land and Natural Resources. It is our understanding that DOCARE has already contacted the Department offering to share its knowledge and technical information that it uses - if the Department were to ever have an agricultural enforcement division. Again, it is patently unfair to criticize ADC for a problem that all farmers encounter, particularly when the solution of an enforcement agency has been discussed repeatedly in the past.

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Another area of ambiguity in Chapter 163D is ADC's target farmer. Because different interests have different goals, ADC is criticized no matter who it helps or with whom it works. If agribusiness is to be driven by small farmers, then ADC's statute should make this clear. Alternatively, if it is to be driven by the larger farmers, then that criteria should be stated. As ADC testified, the criteria are most typically determined by farm gate values rather than the acres in production.<sup>15</sup>

Although Chapter 163D provides ADC with some extraordinary powers, ADC can only operate as quickly and effectively as the constraints other statutes allow, such as processes that all agencies must follow to ensure equitable selection of contractors under the procurement code; the protections of collective bargaining rights and other non-civil service requirements overseen by the Department of Human Resources Development to ensure that union positions are protected; the timeliness of responses to requests for documents and other tangible information under the Uniform Information Practices Act; and all of the typical administrative work that all agencies must follow to ensure the orderly and proper operation of a government office. This administrative work includes quarterly and annual budgeting, allotment, inventory reporting, and the myriad of employment related and required training. These constraints ensure accuracy and propriety of the work that government offices do and are valuable and meaningful requirements. The five to six ADC staff in the main office have spent hundreds of collective hours on these tasks. Again, we reiterate that the constraints on ADC are valuable. But the expectation that ADC should be moving faster than it does is unrealistic. There needs to be better understanding of the capability of a "super-charged" state government agency.

ADC will be requesting positions for a contract specialist to allow it to develop better expertise while continuing its out-sourcing of required services. ADC will also be requesting funding and a position count for its general accounting clerk to assist with its financial operations. These two additional positions will free up the existing five ADC office personnel to focus full time on their actual jobs and enable ADC to better comply with both contracting and accounting requirements in accordance with contract and accounting principles.

## V. CONCLUSION

In closing, we disagree with the audit's conclusion that ADC has done "little" to fill the void left by sugarcane and pineapple, or that ADC's land banking goals and practices was inconsistent with HRS Chapter 163D. Such conclusions illustrate a fundamental lack of understanding of agricultural development. Unlike the development of a commercial building, marketed at unbelievable market rates, agricultural lands are as valuable when they are vacant as when they are developed. Vacant lands are the fundamental building blocks needed for agricultural production and if they are not held, they may be taken for a different purpose and thereby lost to agriculture, likely forever.

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<sup>15</sup> Further discussion is needed to determine a fair and equitable value on which ADC can focus to avoid criticism.

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Acquiring and holding vacant lands is a completely different practice than land banking commercial lands. Vacant lands must be acquired as they become available, in order to avoid being redistricted or reclassified, or merely put to different uses than agricultural production.

Also, the acquisition of the land is only the first step. To develop the land, ADC also conditions the soil, adds infrastructure, and prepares the land to be farmed, typically by farms smaller than the massive sugarcane or pineapple companies. ADC has to solicit for, then select farmers, and as needed, supports them with services to ensure the farmers' success.

Moreover, the ADC works with other state, federal, non-profit, and for-profit partners to help farmers process, package, and market agricultural products. By supporting agribusiness, the ADC helps to advance exports, import replacement, and local food production. With more resources and direction, the ADC will continue to advance the State's interests.

Since receiving the Report, ADC has worked extremely hard to address the recommendations and has succeeded in completing, or at least starting to address most of them. With limited staff members, it was a Herculean burden in addition to the normal workload of the agency. ADC has also heard the suggestions and comments elicited by this Committee and looks forward to reviewing the draft report. ADC, both its staff and board members, are all committed to the mission of supporting Hawaii's agricultural businesses, whether it is by purchasing lands, remediating soil, providing water and infrastructure, or other services for the farmers.

Thank you for the opportunity to submit this closing statement.

## DOA Closing Statement

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Governor

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PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

MORRIS M. ATTA  
Deputy to the Chairperson

### CLOSING STATEMENT OF PHYLLIS SHIMABUKURO-GEISER CHAIRPERSON, BOARD OF AGRICULTURE

THE HOUSE OF REPRESENTATIVES INVESTIGATIVE COMMITTEE  
AUDIT NO. 21-01

DECEMBER 22, 2021

Chairperson Belatti and Members of the Committee:

Thank you for the opportunity to submit a closing statement on the performance audit of the Agribusiness Development Corporation (ADC) for the purposes of Audit No. 21-01. I would like to offer additional information about the data gathering and analysis capacity of the Hawaii Department of Agriculture's Market Analysis News Branch (MANB) for your consideration.

MANB enhances the effectiveness and efficiency of agriculture by conducting economic, market, and business feasibility research, evaluates the efficiency and effectiveness of market development programs, collects data on agricultural commodity shipments, supply and wholesale prices, and disseminates information through various media.

MANB is comprised of six employees: two economists, two Hilo-based research statisticians, one Maui research statistician and one Oahu statistician. The six employees report to Matthew K. Loke, PhD, the Agricultural Development Division Administrator.

Together with the USDA National Agriculture Statistics Service, the department's MANB can assist ADC with providing economic and market data.

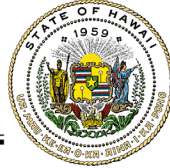
Thank you for the opportunity to submit a closing statement.



# APPENDICES

## Office of the Auditor Closing Statement

STATE OF HAWAII  
OFFICE OF THE AUDITOR  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813-2917



LESLIE H. KONDO  
State Auditor  
  
(808) 587-0800  
lao.auditors@hawaii.gov

December 22, 2021

### VIA EMAIL

The Honorable Della Au Belatti, Chair	(repbelatti@capitol.hawaii.gov)
The Honorable Linda Ichiyama, Vice Chair	(repichiyama@capitol.hawaii.gov)
The Honorable Mark J. Hashem, Member	(rephashem@capitol.hawaii.gov)
The Honorable Dale T. Kobayashi, Member	(repdkobayashi@capitol.hawaii.gov)
The Honorable Val Okimoto, Member	(repokimoto@capitol.hawaii.gov)
The Honorable Amy A. Perruso, Member	(repperruso@capitol.hawaii.gov)
The Honorable David A. Tarnas, Member	(reptarnas@capitol.hawaii.gov)
The Honorable Kyle T. Yamashita, Member	(repyamashita@capitol.hawaii.gov)

House Investigative Committee Authorized by H.R. No. 164  
Hawai'i State Capitol  
Honolulu, Hawai'i 96813

### **Re: Office of the Auditor's Closing Statement**

Dear Members:

We acknowledge receipt of Chair Della Au Belatti's letter dated December 15, 2021, requesting that we provide a written "closing statement." At the end of the committee's hearing on December 15, Chair Belatti announced her intent to solicit closing statements from the "affected agencies," specifically including the Office of the Auditor. While we are not one of the agencies the committee was created and empowered to investigate under its authorizing resolution, we are compelled to submit the enclosed written statement to correct the record that the committee has attempted to create.

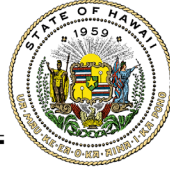
Very truly yours,

Leslie H. Kondo  
State Auditor

Enclosure

cc/encl: Members of the House of Representatives  
Members of the Senate

STATE OF HAWAII  
OFFICE OF THE AUDITOR  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813-2917



LESLIE H. KONDO  
State Auditor

(808) 587-0800  
lao.auditors@hawaii.gov

HOUSE INVESTIGATIVE COMMITTEE TO INVESTIGATE COMPLIANCE WITH AUDIT  
NOS. 19-12 AND 21-01

The Honorable Della Au Belatti, Chair  
The Honorable Linda Ichiyama, Vice Chair

## OFFICE OF THE AUDITOR'S CLOSING STATEMENT

December 22, 2021

Chair Belatti and members of the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01:

We submit this “closing statement” because we need to correct the record that the committee has attempted to create.<sup>1</sup> First, we need to correct the record as to the legitimate and authorized scope of the committee’s investigation. Second, we need to correct the record as to an alleged “pattern of omissions” and anomalies conjured up by the committee from data it either misinterpreted or misunderstood.

### **A clear abuse of power**

The committee’s letter soliciting a “closing statement” pretends that the Office of the Auditor is one of the state agencies that was legitimately “examined during the course of” the committee’s work. We were never legitimately a subject of the committee’s investigation. Later, the committee – or rather, the committee’s chair – claimed we fell within the committee’s authorized scope of investigation. By ignoring the authorizing resolution’s scope of investigative authority, the committee committed a clear abuse of power.

As its name attests, the committee was specifically formed to investigate agency compliance with the recommendations made in our audits of the Department of Land and Natural Resources’ Special Land and Development Fund (DLNR) and the Agribusiness Development Corporation (ADC). The investigation was “for the purposes of improving the operations and management of these state agencies, their funds, and any other matters.”

The Office of the Auditor is not one of “these state agencies,” nor does it fall under “any other matters” relating to those agencies and audits. Despite these facts, the Office of the Auditor has not only been improperly targeted as a subject of the committee’s investigation; for a

<sup>1</sup> We take the Chair at her word. Her letter solicits a closing statement on the analogy of an adversarial proceeding. On the analogy of a trial, then, we have taken the liberty of using language and tone more appropriate to the closing statement of an advocate at a trial, rather than the detached and dispassionate language and tone more appropriate to an audit report. We note, in addition, that unlike a trial, we have not been given the opportunity in this proceeding to present evidence or to respond to evidence or testimony presented by others.



House Investigative Committee  
**Office of the Auditor's Closing Statement**  
December 22, 2021  
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considerable period of time, we became the primary focus of it.<sup>2</sup> We have even been forced to defend in court the confidentiality of our working papers, and the court agreed with us that the committee was improperly attempting to obtain materials confidential by law.

The committee's improper attempt to investigate the Office of the Auditor is based on the false pretext that it is part of investigating the two agencies' "compliance with" the two named audits. This is nonsense. Only a state agency that is the subject of an audit can comply or fail to comply with an audit. The Office of the Auditor can neither comply with, nor fail to comply with, the audits it issued concerning the two agencies.

An investigative committee exercises awesome powers that must be accompanied by a proportionate exercise of fairness and responsibility. That is why the Hawai'i statute governing legislative investigative committees, chapter 21, Hawai'i Revised Statutes (HRS), requires the committee to conduct its hearings "in a fair and impartial manner." HRS § 21-1.

The committee's procedure was not fair. Notice is an elementary requirement of fairness. Yet the Office of the Auditor had no notice that the committee would attempt an investigation of the Office – certainly not from the authorizing resolution. (House members who voted for the resolution also had no notice that it would be used for that purpose.)

### **Only one side, the committee's side**

The committee's selection of testimony was not impartial. It was, rather, an apparent attempt to conjure up malfeasance on the part of the Auditor in the form of alleged audit anomalies and omissions. Those alleged anomalies and omissions are, in fact, easily refuted. Yet, despite the Auditor's willingness (frequently repeated) to answer questions, the committee never gave him that opportunity. The committee clearly did not care to even consider the Auditor's position, avoiding inviting him to address the allegations and innuendos that the committee had cultivated through selective testimony. That does not seem fair or even honest, but it is definitely not impartial.

An investigative committee is a kind of "adversary proceeding,"<sup>3</sup> much like a trial. Like a trial, the committee brings the awesome power of the state to bear on individual witnesses, who must testify under oath. Like a trial, an investigative committee can compel attendance of witnesses, compel testimony, and compel the production of documents. Unlike a trial, however, only committee members can ask questions of witnesses. Unlike a trial, no one on the receiving end

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<sup>2</sup> Whether the committee ultimately steps back from its excursion beyond the bounds of its legally authorized investigation remains to be seen; that will depend on the committee's final report.

<sup>3</sup> Stand. Com. Rep. No. 48, 1969 House Journal page 630 (noting "the many similarities between an adversary proceeding and a legislative investigation.") Chapter 21's legislative history says it was intended to be "a code of fair legislative procedure of the type that history has evolved for the courts." Id. at 629. A code of fair legislative procedure would not allow an investigative committee to exercise unauthorized and therefore illegal power – any more than a code of fair judicial procedure would.

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**Office of the Auditor's Closing Statement**  
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of committee process is entitled to confront his or her accusers. Unlike a trial, witnesses testify under a continuing threat of criminal contempt.

Also, unlike a trial – or any other adversarial proceeding for that matter – a committee investigation can be deliberately conducted in a one-sided manner, and the one-sided story is not subject to correction. Unlike a trial, in a committee investigation, the other side does not have the power to compel witnesses to appear and to ask questions of witnesses. Unlike a trial, there are not even two sides to begin with – a prosecutor and a defendant. There is only one side – the committee's side – and only the committee is able to present witnesses to support its narrative.

In a trial, one side can ferret out inconsistencies or omissions in the other side's telling of the story through cross-examination. But an investigative committee does not allow questions by anyone not on the committee, and it need not attempt to balance the committee's perspective with contrary perspectives and contrary questions. It need not tell the whole story. In an investigative committee, unlike a trial, testimony can be choreographed to tell only one side of the story. In an investigative committee hearing and report, the committee can write its own script in advance, including its own pre-determined outcome, if it so chooses.

That is why the requirement that an investigative committee must be "fair and impartial" is so important. And that is why investigative committees must be scrupulously held to the limits of the authority delegated to them by one or both chambers in the legislative resolution that creates and authorizes the committee. Without those limits, the committee's powers would be virtually unlimited, and most would question whether politicians should be entrusted with unlimited power. That is not a comment on the character of any particular member of the committee. It is simply a comment on human nature. As Lord Acton famously said, "all power tends to corrupt, and absolute power corrupts absolutely."<sup>4</sup>

Here, a committee that was authorized and constituted to investigate only two agencies instead decided it had the power to investigate a third – the Office of the Auditor – not even mentioned in the House's authorizing resolution. It is not a coincidence that this unauthorized excursion beyond the bounds of the committee's authority would allow the committee, or its chair, to drum up testimony against the Auditor, as opposed to what House Resolution No. 164 actually envisioned: testimony that would assist DLNR and ADC to overcome the significant shortcomings identified in the findings in each of our audits of those agencies.

### **Auditing the Auditor**

The "change" in the course of the investigative committee's inquiry is hardly surprising. On January 14, 2021, House Speaker Scott Saiki issued a memorandum to all House members announcing his unilateral creation of a "State Auditor Working Group." Less than a week later, the Speaker introduced House Bill No. 1, which proposed cutting the Office of the Auditor's budget by more than 50 percent. Five days later, he and House Majority Leader Della Au

<sup>4</sup> Quoted in Herbert Butterfield, *The Whig Interpretation of History* (New York: W.W. Norton, 1965), 110.

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Belatti, who Speaker Saiki appointed to be the chair of this committee, introduced House Bill No. 354, which would have given lawmakers control over the Auditor's salary (currently set by the Salary Commission). The bill quickly died. And, two days after that, House Majority Leader Belatti introduced House Bill No. 1341, which would have established an office of public accountability to assume oversight and administrative responsibility for (i.e., control over) the Office of the Auditor and other watchdog agencies. That bill also died.

Like Speaker Saiki's Auditor Working Group before it, the committee's investigation of the Office of the Auditor seems to have been driven by a pre-existing political agenda. The committee was authorized to conduct a fact-based inquiry into the significant problems within DLNR and ADC, as reflected in House Resolution No. 164 and in the committee's own formal title. The committee's charter was to investigate those agencies' compliance with the audit recommendations and thereby to assist them in achieving their missions more effectively.

It was a great leap from that specific and limited charter to using the committee to attempt – first covertly, and then increasingly overtly – to continue to “audit the auditor” by other means. The rerun of that prior effort by the working group, now under a different name, even features some of the same actors, for example, the former auditor of the City and County of Honolulu, who had a starring role in the earlier show, yet knows nothing about the two agencies' compliance with their respective audit recommendations. In any case, this effort is far beyond what the House authorized – and smacks of some form of political retribution against the Auditor. If that is what it is (or even partly is), then it is a political assault on an office that was designed under the Hawai'i Constitution to be independent of such political pressures.

### **An inquiry that ignores inconvenient facts and stops short at insinuation and innuendo**

On October 20, 2021, Chair Belatti announced that the committee would be pursuing “a larger pattern by the Auditor to unilaterally decide not to report on certain substantive and critical issues discovered in the field, including in some cases of criminal and potentially criminal acts.” She made this announcement before introducing the first of several witnesses whose recollections supposedly necessitated this change of direction. That witness, Ronald Shiigi, former Administrative Deputy Auditor, gave a hazy, fact-free account of a fraud by a former DLNR Land Division employee that went unreported by the Office of the Auditor. Mr. Shiigi, who was the supervisor on the audit, claimed that he was made aware of the fraud by two analysts he supervised and passed the information along to the Auditor. He could not recall the details of his conversations with the two analysts regarding the fraud or any subsequent discussions with the Auditor. He did claim that the Auditor makes the final call on what is or is not included in the final audit report, implying that the Auditor had arbitrarily dropped the matter.

Mr. Shiigi's claims of negligence were quickly and easily refuted by committee member Representative Dale Kobayashi, who pointed out that not only had DLNR been aware of the fraud before the office's analysts discovered it, but the Department of the Attorney General had

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prosecuted the case and secured a verdict. Later that day, DLNR Chairperson Suzanne Case confirmed to Chair Belatti that DLNR had forwarded the case to the Attorney General long before she met with Mr. Shiigi's audit team. Undeterred, Chair Belatti noted that it was still unclear if the fact that the fraud had been fully prosecuted had been evident to members of the audit team at the time. If Chair Belatti was truly interested in gaining clarity on this and other issues, she could have just asked the Auditor. She did not.

This type of inquiry, which ignores inconvenient facts and stops short at insinuation and innuendo, continued with the testimony by a former contractor who worked on an unrelated audit and got even worse with the former city auditor, whose testimony descended into hyperbole and name-calling.

**There is no pattern; there are no omissions**

On numerous occasions, Chair Belatti has proclaimed that the committee would follow the evidence where it took them, as she described an ever-growing inventory of documents in the tens of thousands that she and the committee's staff had to sort through. We had hoped that the laborious review involved Report Nos. 19-12 and 21-01 and their findings and recommendations. However, it became quickly apparent that the committee was far too interested in seeking information about what the Auditor did not do, instead of focusing on the real, serious problems and issues raised in the audit reports.

Both Report Nos. 19-12 and 21-01 raised serious issues that showed the need for reform and contained recommendations designed to help bring about those reforms, and it is noteworthy that the committee does not criticize our work product. And neither ADC nor DLNR disputed our findings, and in fact, both testified about actions they were taking to implement our recommendations.

Our reports are thorough, accurate, and impactful. They provide transparency into agency programs, include findings that are supported by real evidence, and offer meaningful recommendations to improve program operations. It is truly a shame that the investigative committee squandered the opportunity to fully address the real problems and shortcomings with DLNR and ADC identified and reported in Report Nos. 19-12 and 21-01.

We ask that the committee take all of this into consideration as it completes drafting of the report. There should be no room in the report for innuendo and unsupported allegations. However, if the committee is to properly discharge its duty to make relevant, helpful findings that are related to the purpose for which it was formed, we would hope that your report will focus on DLNR and ADC and omit the troubling and improper lines of inquiry impugning our office.

The public deserves better.

# APPENDICES

## APPENDIX D: WRITTEN RESPONSES TO THE DRAFT REPORT OF THE INVESTIGATIVE COMMITTEE

### DLNR Response to Draft Report



DAVID Y. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

January 11, 2022

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

The Honorable Della Au Belatti  
Representative, House District 24  
The Thirty-First Legislature  
Hawaii State Capitol, Room 439  
415 S. Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Belatti, Vice Chair Ichiyama and Members of the Committee,

Thank you for the opportunity to provide our response on the Draft Report of the House Investigative Committee Established under HR 164 ("Draft Report"). The Department of Land and Natural Resources ("Department") agrees with the findings the Draft Report as they relate to Audit No. 19-12 and provides the following additional comments with respect to the specific recommendations contained therein.

Regarding the recommendation of the House Investigative Committee ("Committee") that the Department update its leases using a standardized lease template that incorporates statutory requirements and current industry leasing terms and practices, including provisions to address environmental issues in the event environmental mitigation is needed (page 6), we note that the Department of the Attorney General already conducts periodic reviews of lease and revocable permit templates to update them to current industry leasing terms and practices. We have no objection to the Committee's recommendation insofar as it underscores the need for this kind of review.

Regarding the recommendation of the Committee for third-party inspections of State leases every five years paid for by lessees (page 7), the Department believes that such a lease condition would be desirable going forward. This condition could be included in new leases issued by the Department and with enabling legislation could even be made a condition of extended leases that the Board of Land and Natural Resources ("Board") approves under existing law. The enabling legislation should be clear that it applies to both directly negotiated and public auction leases because public auction leases cannot be amended without express statutory authority (even as a condition to extension). However, we believe there may be a constitutional "impairment of contracts" issue that poses a challenge to amending existing leases still governed by their original terms or extended terms where the extension documents have already been executed.

The cost of a third-party inspection could vary widely depending on the parameters of the inspection. An evaluation of the condition of existing structures can be very expensive if design

The Honorable Della Au Belatti  
Representative, House District 24  
January 11, 2022  
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or engineering professionals are retained to assess their compliance with building code requirements (either current or past codes depending on the age of the structure), the integrity of the structure, recommended repairs or improvements, or the structure's remaining useful life. Less costly would be an inspection covering compliance with key lease covenants including character of use, subleasing only with landlord consent, maintenance of improvements in good order, condition and repair (reasonable wear and tear excepted), and handling and storage of hazardous materials (if applicable).

With respect to the Draft Report's as yet unspecified recommendation on non-profit leasing (page 8), the Department believes it is important for the Board to retain the discretion to issue leases at nominal or below market rents for uses that serve vital community needs that supplement core government functions and public purposes, such as food banks, community health, education and homeless services, hospices, and environmental protection. In the past, the Board issued leases to churches at nominal rents as long as the church held an Internal Revenue Code ("IRC") Section 501(c)(3) determination letter. More recently, the Board has required a showing by churches, clubs and other organizations that principally serve their membership to demonstrate that the extent to which they also provide some services to the public at large in order to qualify for nominal or below market rent; the Board has aimed to allocate a 501(c)(3) discount only to that public purpose portion of the rent. There are very few discounted rent leases situated on prime commercial lands and these are generally for providers of the vital community needs noted above (food banks, community health, education and homeless services, and hospices). The Department notes that the "non-profit" status of the Sand Island Business Association was not used as a basis for calculating its rent, which the State charged at fair market rent; rather, it was the legal entity used by the master lessor to manage its subleases. See below for further detail.

If the Committee pursues the recommendation in the Draft Report authorizing direct negotiation of leases (page 8), the Department believes a 5-year lease term is too short, especially if the lessee will need to make substantial improvements to the property. Most commercial lessees need a minimum term of 35 years to qualify for financing or to recoup their costs for self-financed improvements. The Department therefore recommends direct negotiated leases be authorized up to 35 years, which is consistent with a bill the Administration is seeking to introduce in the 2022 legislative session to amend Section 171-59, Hawaii Revised Statutes ("HRS"). The Department agrees with the Committee on establishing the level of other interest in a lease through publication of a Request for Interest, and only proceeding with direct negotiation if there is no other interest expressed through a published request for interest.

Regarding the as yet unspecified recommendation on ceded land revenues and the public trust (page 15), we would like to reiterate that Section 171-19, HRS, specifically authorizes the use of funds (whether derived from ceded or non-ceded land sources) as the Department has expended them. The Legislature authorizes all special fund ("B" fund) expenditures annually in the budget. Additionally, the Department's top revenue sources are generally from non-ceded lands (e.g., Sand Island Business Association and Westridge Shopping Center), and therefore not subject to the Admission Act, Section 5(f) limitations on the use of ceded lands revenues.

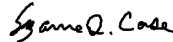
# APPENDICES

The Honorable Della Au Belatti  
Representative, House District 24  
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With respect to the recommendation that the Department follow up regarding the potential loss of non-profit status of its lessees and its impact on leases (page 19), the Department concurs in the recommendation. However, the Department notes that the example used in the discussion following the recommendation may not best illustrate the Committee's point. While the Sand Island Business Association ("SIBA") is a Hawaii nonprofit and holds an IRC Section 501(c)(4) designation, it does not pay below market rents.<sup>1</sup> In fact, SIBA currently pays a premium over market rent because a 22.5% escalator is applied five years after every rent reopening at market rate. In contrast, leases issued at nominal or below market rates to serve vital community purposes (food banks, community health, education and homeless services, hospices, and environmental protection discussed above) must hold an IRC 501(c)(1) or (3) designation and maintain their non-profit status to retain the benefit of the rent discount. Another important distinction is the SIBA lease was issued pursuant to the industrial park provisions of the public lands statute (Sections 171-131, *et seq.*, HRS), and not the eleemosynary organization provision (Section 171-43.1, HRS) allowing for nominal or below market rents to IRC Section 501(c)(1) or (3) entities.

Once again, the Department would like to express its appreciation for the Committee's important work in this investigation. The Department welcomes any future opportunities to consult with members of this Committee (or the rest of the Legislature) on future statutory improvements to help manage State lands under the Department's control.

Sincerely,



Suzanne D. Case  
Chairperson

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<sup>1</sup> Section 171-43.1, HRS, allows the Board the discretion to issue direct leases at below market rents to only those eleemosynary organizations holding an IRC section 501(c)(1) or (3) designation.

# APPENDICES

## Keith Chun Response to Draft Report

### MEMORANDUM

To: Chairperson Della Au Belatti and Members of the House Investigative Committee

From: Keith Chun ✓

Date: January 13, 2022

Re: Comments to Draft Report of the House Investigative Committee Established Under HR 164

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The following responses are submitted to the above-referenced draft report.

In addition to providing oral testimony to the Committee, I also submitted documentation that supports my responses. Since the Committee is already in possession of most of the documents that I reference below, I am not resubmitting them with this memo. However, if you require additional copies, please let me know. My responses and comments are as follows:

Page 5: Strategic Planning. The Committee recommends that DLNR's Land Division ("LD") prioritize developing a strategic plan for DLNR's revenue generating lands.

Response: A strategic plan is one of the basic tools used by all major landowners. It is inconceivable that the owner of 1.3 million acres of public lands lacks any such plan. LD's plans for individual parcels can hardly be deemed a strategic plan. In fact, it is further evidence that LD manages its lands on a piecemeal basis without any type of overall comprehensive strategy.

In 2015, I prepared a draft strategic plan entitled Asset Management / Income Production Strategy dated July 28, 2015, a copy of which has already been provided to the Committee. However, Kevin Moore (LD Assistant Administrator) informed me that Russell Tsuji (LD Administrator) determined that such a plan was not necessary and instructed me to cease all work on it. This is clear evidence that LD's administrators do not see the value of having such a plan/

The July 2019 audit also recommended that LD develop a strategic plan, and yet, we are now in the year 2022 and LD has yet to produce even a draft of a strategic plan. I understand LD's administrators have retained a consultant to prepare such a plan. However, if LD's administrators are incapable of preparing such a plan on their own, they clearly lack the expertise to manage the State's lands.

Moreover, this is but one example of LD's administrators ignoring recommendations made by staff and the 2019 Audit and failing to understand and incorporate basic real estate practices.

In my responses below, you will see a pattern of behavior by LD's administrators of ignoring recommendations and established real estate practices.



# APPENDICES

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Members of the House Investigative Committee  
January 13, 2022  
Page 2

Page 6: Standardized Lease Template. The Committee recommends that DLNR update its leases using a standardized lease template that incorporates statutory requirements and current industry leasing terms and practices.

*Response:* I made the exact same recommendation in my 2015 draft Asset Management / Income Production Strategy (see Item 6 of my draft Asset Management / Income Production Strategy). As stated above, Russell Tsuji determined that an Asset Management Plan was not necessary and instructed me to cease all work on it.

Page 11: Lease Extensions (Rent Premiums). The Committee recommends that DLNR be allowed to charge rent premiums on extended leases to compensate the State for foregoing the reversionary interest and incorporate the value of the improvements on the property.

*Response:* HRS Section 171-6 already grants the Board of Land and Natural Resources (“BLNR”) broad powers that would allow charging rent premiums and incorporating the value of the improvements on the property. Section 171-6(19) authorizes BLNR to “[d]o any and all things necessary to carry out its purposes and exercise the powers granted in this chapter.”

On multiple occasions dating as far back as 2013, I provided written recommendations that included the exact same recommendations now being made by the Committee, which recommendations were also consistent with accepted real estate practices in both the private and public sectors. There are at least four separate memos addressed to LD’s Administrators Russell Tsuji, Kevin Moore and Ian Hirokawa (several of these memos were previously provided to the Committee). I also provided the Committee with a copy of the CBRE Study on Market Practices on Lease Extensions dated December 9, 2015. This study was commissioned by DLNR itself (by its Division of Boating and Ocean Recreation) and detailed the practices of numerous lessors (in both the private and public sectors). A copy of this report was provided to DLNR’s Chairperson and LD.

Again, LD’s administrators chose to ignore the recommendations in my memos and in the CBRE report, including but not limited to the recommendations regarding charging a premium for lease extensions (which was also suggested in the testimony of BLNR member Vernon Char) and participating in sublease rents.

I had hoped the Committee would be concerned with the fact that LD’s administrators chose not to address these issues despite them being raised on multiple occasions. Does the Committee believe that such behavior in managing the State’s lands is acceptable? The LD administrators were informed of these issues over nine years ago and also exposed in the Honolulu Star-Advertiser. They were subsequently written up in the 2019 Audit, and now it is 2-1/2 years later and they have still not addressed these issues. Absent the audit and Committee’s inquiry, it is clear that LD would have continued to ignore these issues. Again, I believe this pattern of behavior over the past ten years is unacceptable for an agency charged with managing 1.3 million acres of public lands.

# APPENDICES

Memorandum to Chairperson Della Au Belatti and  
Members of the House Investigative Committee  
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Page 12: Lease Extensions (Appraisals). The Committee recommends a lessee pay for the appraisal and be precluded from protesting the rent so determined.

*Response:* Again, I made this same recommendation regarding barring a lessee from protesting the rent determined by appraisal in my 2013 memos regarding KIA lease extensions. Again, LD administrators chose to ignore my recommendation. I believe giving LD nine years to address simple matters like this is much too long.

Page 11: Lease Extensions (Sublease Provisions). The Committee recommends that DLNR be given statutory authority to update leases and sublease provisions to participate in sublease income.

*Response:* Again, I raised this issue of sublease rents my 2013 memos regarding KIA lease extensions. LD administrators again chose to ignore my recommendation. As mentioned above, BLNR already has broad statutory authority under HRS 171-6, which would allow LD to recommend participating in sublease revenues in any lease extensions presented to BLNR. LD has chosen not to do so, seemingly relying on the fact that HRS Chapter 171 does not explicitly direct LD to do so (which is flawed as BLNR already has the power to do so).

Page 15: Public Land Trust and Ceded Land Revenues. The recommendation section is blank.

*Response:* While I acknowledge that expenditures from the SLDF are consistent with one of the five purposes enumerated in the Admissions Act, the broad authority granted to LD to transfer revenues from ANY (and potentially ALL) leases of ceded lands is overly broad and not in the best interest of the public trust beneficiaries. Under this broad power, LD could transfer ALL ceded land revenues to the SLDF, which would mean \$0 in ceded land revenues would be transferred to the State's general fund and would not be available for four of the purposes enumerated in the Admissions Act, i.e., any funds deposited in the SLDF cannot be used for the public schools, for the betterment of conditions of Native Hawaiians, or for farm and home ownership. I believe decisions on how ceded land revenues are used should fall within the Legislative Branch's purview.

LD's Pattern of Ignoring Warnings and Recommendations. In addition to my responses above, the following is a detailed example of LD's inability to undertake one of the most basic functions of a landlord, i.e., understanding basic lease terms/conditions and collecting the correct lease rent in a timely manner. The following example is regarding the lease for the Hilo Hawaiian Hotel, and Kevin Moore has testified the problems with the lease were an "oversight". Based on the chronology below, I would hardly consider LD's inactions to be an "oversight" and ask whether the Committee feels Mr. Moore's explanation is acceptable.

- 12/22/15: An amended lease prepared/supervised by Kevin Moore was issued for the Hilo Hawaiian. The lease includes the following terms and conditions:
- Payment of an annual base rent of \$185,400, to be paid semi-annually, in advance on January 12<sup>th</sup> and July 12<sup>th</sup> of each year.

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Memorandum to Chairperson Della Au Belatti and  
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- Payment of percentage rent equal to 2% of annual gross revenues. To be paid in advance (i.e., before revenues are actually earned) on January 12<sup>th</sup> and July 12<sup>th</sup> of each year.

- 03/01/16: Memo from Keith Chun to Russell Tsuji, Kevin Moore and Ian Hirokawa pointing out problems with the Hilo Hawaiian lease, including but not limited: to the requirement percentage rents be paid prior to revenues being earned; the lack of revenue reporting requirements; DLNR's lack of rights to review/audit the lessee's books and records to confirm revenues; and DLNR's lack of right to enforce payment if revenues are incorrectly reported. (the Committee already has a copy of my memo).
- These lease provisions are standard terms and conditions and are the type of provisions that should be known by anyone with a basic knowledge of real estate leasing practices and lease documents.
- However, these issues were completely ignored by LD's administrators and were not addressed until December 2021, with Kevin Moore claiming it was an "oversight". It is not clear whether they intentionally ignored the warnings or if they lack the basic knowledge of real estate leases to properly address the problems. However, in either case, they are clearly not qualified to manage the State's public land leases.
- 09/11/16: LD billed and collected the incorrect base rent amount. The lease requires semi-annual base rent payments of \$92,700.00, but LD only billed and collected \$66,600.00 from the lessee. (see attached **Exhibit "A"**).
- Moreover, LD failed to collect ANY percentage rents as required in the lease for FOUR years (from 2013 to 2016), which amount exceed one-half million dollars. LD finally collected these percentage rents four years later, with the percentage rents totaling \$547,505.34. (see attached **Exhibit "B"**)
- 02/21/16: The Honolulu Star Advertiser publishes an article criticizing LD's lax land management practices. However, LD's administrators did nothing to address its failure to understand and implement standard leasing and property management practices, including not correcting its lease rent billing and collection problems they were explicitly made aware of, in writing, regarding the Hilo Hawaiian lease.
- 12/2018: The Honolulu Star Advertiser publishes a three-part front page series describing LD's poor land management practices. Again, LD's administrators did nothing other than to object to the articles and assert that its management of public lands was sound and not deficient in any way. In the meantime, the problems with the Hilo Hawaiian lease remained uncorrected.
- 06/2019: The State Auditor issues its audit of DLNR's Special Land and Development Fund, which criticizes Land Division's lack of procedures to review and collect percentage rents

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Memorandum to Chairperson Della Au Belatti and  
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required in its leases. Again, LD ignored the audit recommendation and does nothing to address the problems with the Hilo Hawaiian lease percentage rent provisions.

07/2021: House Investigative Committee formed to review audit of SLDF. Committee hearings are held from September through December 2021.

At one hearing, Kevin Moore is questioned about the irregularities in the Hilo Hawaiian lease and again claims it was an "oversight" (i.e., one that has existed for over 5-1/2 years despite LD administrators being specifically informed of these problems) and that LD would be returning to BLNR to fix the problem.

11/12/21: More than five years after being informed of the problems with the Hilo Hawaiian lease, LD finally presented its recommendations to amend the lease to address the problems that have been outstanding since 2016. However, LD's recommendations are flawed and failed to properly correct the flaws in the lease.

It was only due to the written testimony I submitted to BLNR pointing out the flaws that the necessary corrections were made. (see attached **Exhibit "C"**, a copy of which was previously sent the Chair and Vice-Chair of this Committee). Absent my testimony, the Hilo Hawaiian lease would continue to be flawed. Again, these are very basic lease terms that are commonly found in leases that require percentage rents, yet LD's administrators seem to lack the basic expertise necessary to properly draft, review and manage such leases.

This is only one example of how LD has continued its poor management practices for years. More importantly, it is an example of how LD's administrators were made aware of problems, but repeatedly and intentionally chose to ignore them. Does the Committee really accept Kevin Moore's explanation that all of this was an "oversight" that continued for over five years despite multiple warnings? I believe a more accurate description is that LD intentionally and knowingly disregarded these warnings, and I would hope the Committee would look into this type of behavior further.

Again, the above is only one example. Other examples of recommendations being ignored and only addressed after being made public include: (1) my draft Asset Management / Income Production Strategy; (2) my recommendations to correct LD's mismanagement of its revocable permits; and (3) my recommendations regarding alternatives to address expiring leases.

Summary. LD's administrators have continued to assert they are properly managing the State's inventory of public lands. The evidence, however, indicates the opposite. Unfortunately, it appears from the draft report that the Committee does not see any problem with this long-standing pattern of behavior exhibited by LD's administrators. In fact, it appears that many members of the Committee believe it is acceptable to give LD's administrators multiple chances to retroactively address problems they were alerted about for years, including giving them over 2-1/2 years to begin addressing issues raised in the 2019 audit.

Memorandum to Chairperson Della Au Belatti and  
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I understand Representative Kobayashi's family owns rental/income property. As such, I pose the following questions to Representative Kobayashi (and to any other Committee member that owns rental/income property): If the property manager you hired to manage your property performed in the manner described above, would you continue to retain that property manager? Do you think performing in the manner described above merits being paid a property management fee?

In other words, if your property manager: (1) failed to collect and remit to you the correct rental amount you are entitled to under the lease; (2) failed to collect and remit to you percentage rents you are entitled to under the lease for four years; (3) lacked a basic understanding of standard leasing practices and lease terms/conditions; and (4) ignored you for years when you raised concerns about its management of your property, would you consider your property manager's performance acceptable and continue to pay a management fee for such "service"? Or would you have fired that property manager years ago? Don't you think the taxpayers (i.e., your constituents) deserve better?


I firmly believe there will not be any significant improvement in the management of our public lands without changing LD's administrators. They have been given over 10 years to improve their management and given multiple warnings, yet little has changed. They have consistently defended the manner in which they have managed the State's land, and yet have continued to exhibit an incredible lack of knowledge of basic real estate and business practices. This, along with their inability to admit they have any shortcomings or have made any errors, means they will not take any actions unless they are forced to and are subjected to follow up by this Committee, the Auditor's office, or the media.

Once the Committee's report is finalized, I intend to share the information and documents I have with various stakeholders (including business colleagues, community members, members of the Senate, family, and friends) so they will have insight as to how their public lands have been mismanaged and know who the individuals are that have mismanaged our public lands for years. They will also find out whether the Committee believes these LD administrators have been doing a good job and stand behind LD's performance.

Finally, I understand that in addition to the \$161 million the Legislature appropriated to DLNR for the current fiscal year, DLNR is now asking the Legislature for an additional \$31.6 million. Imagine the funding that would be available to DLNR if LD had been properly managing the public land portfolio over the past decade? Should the Legislature reward DLNR for its mismanagement of public lands by appropriating additional funding?

# APPENDICES

**DEPARTMENT OF LAND AND NATURAL RESOURCES**



**FISCAL OFFICE**  
P.O. BOX 621  
HONOLULU, HAWAII 96809-0621  
(808) 587-0353  
09/11/16

**DOCUMENT NUMBER**  
gl3961

COST CENTER: 0530      SOURCE: 1720      TOTAL DUE: \$66,600.00

HILO- HAWAIIAN ASSOCIATES, INC.  
C/O CASTLE RESORTS & HOTELS  
71 BANYAN DRIVE  
HILO, HI 96720

PLEASE DISREGARD THIS BILL IF PAYMENT HAS BEEN MADE  
AMOUNT PAID: \_\_\_\_\_

PLEASE DETACH AND RETURN ABOVE PORTION WITH YOUR PAYMENT FOR PROPER CREDIT

REFERENCE		APPTO	BILLING PERIOD	DESCRIPTION	AMOUNT
DATE	NUMBER				
10/15/2016	C-260083	Balance Due	10/15/2016 - 04/14/2017	RENTALS LEASED LANDS (10/2016)	66,600.00

Please Make Check Payable To: "Land & Natural Resources"  
PAST DUE AMOUNTS MAY BE SUBJECT TO A 1% PER MONTH FINANCE CHARGE AND A LATE FEE  
THE STATUS OF YOUR ACCOUNT IS AS FOLLOWS:

CURRENT	1-30	31-60	OVER 60	TOTAL DUE
66,600.00	0.00	0.00	0.00	\$ 66,600.00

← Should be \$92,700.00

DOCUMENT NUMBER

gl3961

- 99 -

**EXHIBIT "A"**

# APPENDICES

## Tenant Ledger

HILO- HAWAIIAN ASSOCIATES, INC.  
C/O CASTLE RESORTS & HOTELS  
71 BANYAN DRIVE  
HILO, HI 96720

Date: 01/06/17  
Tenant Code: g0361  
Property: H2000005  
Unit: 01  
Status: Current  
Rent: 66,600.00  
Deposit: 0.00  
Move In Date: 04/15/66  
Move Out Date:  
Due Day: 15  
Tel# (O):  
Tel# (H):

Date	Description	Charges	Payments	Balance
07/24/14	Balance Forward			6,649.21
10/06/14	CR00005 APPRAISAL DEPOSIT		6,649.21	0.00
10/15/14	CR00007 PAYMENT		66,600.00	-66,600.00
10/15/14	RENTALS, LEASED LANDS (10/2014)	53,280.00		-13,320.00
10/15/14	RENT - LEASED PUBLIC LANDS (10/2014)	13,320.00		0.00
04/10/15	CR00006 PAYMENT		66,600.00	-66,600.00
04/15/15	RENTALS, LEASED LANDS (04/2015)	53,280.00		-13,320.00
04/15/15	RENT - LEASED PUBLIC LANDS (04/2015)	13,320.00		0.00
10/05/15	CR00008 PAYMENT		66,600.00	-66,600.00
10/15/15	RENTALS, LEASED LANDS (10/2015)	53,280.00		-13,320.00
10/15/15	RENT - LEASED PUBLIC LANDS (10/2015)	13,320.00		0.00
03/31/16	DOCUMENT FEE	30.00		30.00
03/31/16	SURVEY MAP FEE	25.00		55.00
03/31/16	CR00044 DOCUMENT FEE		30.00	25.00
03/31/16	CR00044 SURVEY MAP FEE		25.00	0.00
04/06/16	CR00004 PAYMENT		66,600.00	-66,600.00
04/15/16	RENTALS, LEASED LANDS (04/2016)	53,280.00		-13,320.00
04/15/16	RENT - LEASED PUBLIC LANDS (04/2016)	13,320.00		0.00
10/06/16	CR00009 PAYMENT		66,600.00	-66,600.00
10/15/16	RENTALS, LEASED LANDS (10/2016)	53,280.00		-13,320.00
10/15/16	RENT - LEASED PUBLIC LANDS (10/2016)	13,320.00		0.00
12/27/16	PERCENTAGE RENT-2013	45,338.00		45,338.00
12/27/16	PERCENTAGE RENT-2014	159,844.99		205,182.99
12/27/16	PERCENTAGE RENT-2015	162,738.62		367,921.61
12/27/16	PERCENTAGE RENT-2016	179,583.73		547,505.34
12/27/16	H005193 PERCENTAGE RENT-2013		45,338.00	502,167.34
12/27/16	H005193 PERCENTAGE RENT-2014		159,844.99	342,322.35
12/27/16	H005193 PERCENTAGE RENT-2015		162,738.62	179,583.73
12/27/16	H005193 PERCENTAGE RENT-2016		179,583.73	0.00

Current	30 Days	60 Days	90 Days	Amount Due
0.00	0.00	0.00	0.00	0.00

EXHIBIT "B"

# APPENDICES

November 10, 2021

To: The Board of Land and Natural Resources (via email: [blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov).)  
Re: Testimony on Agenda Item D-4 (Amendment of Extended, Amended, and Restated General Lease No. S-3961, Hilo Hawaiian Associates, Inc., Lessee; Government Lands Situate at Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-003:005)

My name is Keith Chun. I was formerly employed by DLNR's Land Division ("LD") from 2001 to 2016 as its Planning and Development Manager. I offer the following comments and suggestions to Agenda Item D-4:

1. Land Division incorrectly characterizes the proposed amendment to the Hilo Hawaiian Hotel as being a standard provision that was "inadvertently omitted".

Contrary to LD's attempt to explain the poorly drafted lease being "inadvertent", LD's administrators were specifically made aware of these problems in 2016. (see email to Russell Tsuji, Kevin Moore and Ian Hirokawa dated March 1, 2016, a copy of which is attached as **Exhibit A**). Exhibit A also includes a reply from Russell Tsuji in which he stated essentially says all LD percentage rent leases are "just standard". The LD administrators chose to ignore these issues in 2016, and as such, their attempt to now try to assert it was inadvertent is disingenuous.

Furthermore, an audit of DLNR's Special Land and Development Fund published in June 2019 (the "2019 Audit") also identified problems with LD's procedures for collecting and monitoring percentage rents. (see attached **Exhibit B**)

Finally, the House of Representatives Investigative Committee ("HIC") that was formed earlier this year to investigate DLNR's responses to the 2019 Audit also discussed this issue.

LD is now attempting to address these problems, but it has taken over five years since I notified LD of these problems, and over two years since the 2019 Audit was published. LD's attempt to characterize this as an "inadvertent omission" is clearly inaccurate and intentionally misleading.

2. The proposed amendment to the Hilo Hawaiian Hotel Lease (the "Lease") will result in conflicting terms and conditions.

The proposed amended language would be added as a Paragraph 3 of the Lease and require the lessee to percentage rents, annually and in arrears no later than 180 days after the end of the lessee's fiscal year.

This, however, would conflict with Paragraph 2 (on Page 2) of the Lease, which is not being amended. Paragraph 2 requires percentage rents (and base rents) to be paid semi-annually, and in advance on January 12<sup>th</sup> and July 12<sup>th</sup> of each year.

**EXHIBIT "C"**



Testimony of Keith Chun on Agenda Item D-4  
Page 2

3. The LD Administrators Lack Knowledge of Basic Lease Provisions.

The Lease was drafted personally by Kevin Moore, LD's Assistant Administrator. Mr. Moore was directly involved in drafting the Lease because the Lease was amended pursuant to Act 219 (2011) and required direct attention of personnel above the staff level. However, the resulting Lease clearly shows a lack of understanding of basic lease terms and conditions.

In contrast, the proposed amended provisions sought in this Board submittal were taken directly from the lease for the Naniloa Hotel (Lease No. S- 5844), which I personally drafted in 2005. I do not believe these provisions can be found in any other LD lease, and as such, it is inappropriate for LD to refer to these as "standard provisions".

As an example, the deadline for payment of percentage rents in the proposed amendment is 180 days after the end of the lessee's fiscal year. This time period was negotiated to coincide with the time period required for the lessee to have audited financial statements prepared. This would allow LD to confirm the lessee's annual revenues against the revenues reported in its audited financial statements. However, this is not a "standard" provision as not all lessees have audited financial statements. For those lessees, it would be prudent to require percentage rents to be paid sooner.

As I indicated in my 2016 email, it is important that percentage rent provisions provide LD with the rights necessary to confirm the amounts of percentage rents and to audit a lessee's records if necessary. The Naniloa Hotel lease provides a viable mechanism by tying the payment of percentage rents to the lessee's fiscal year and the period covered by its financial statements.

In contrast, Paragraph 2 of the Hilo Hawaiian Hotel lease requires semi-annual payments for periods from January 12<sup>th</sup> to July 11<sup>th</sup>, and from July 12<sup>th</sup> to January 11<sup>th</sup> of each year. I do not know of any company that has financial statements prepared for such periods, and as such, would need to create separate records specifically for the purpose of calculating percentage rents. Moreover, the data provided in the Board submittal show percentage rents being collected for each calendar year period, which is clearly not in accordance with the time periods required in Paragraph 2 of the Lease

The fact that Paragraph 2 also requires percentage rents be paid in advance of the revenues being generated is also baffling.

Clearly, there are problems with LD's procedures for collecting and monitoring percentage rents, as pointed out in the 2019 Audit. However, the fact that LD's administrators cannot get a grasp on basic lease provisions (further evidenced by Assistant Administrator Moore's drafting of the Lease) should be very worrisome to the Board.

4. LD Administrators have Ignored Other Staff Recommendations in the Past.

In addition to ignoring my memo regarding the percentage rent provisions in the Lease, LD administrators have ignored or rejected other recommendations, including but not limited to recommendations made in 2012 to increase revocable permit rents, proposals in 2015 for a long-range strategic plan, and a 2015 marketing strategy proposal. These are only a few examples, but all were rejected by Messrs. Tsuji, Moore and Hirokawa, only for such

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Testimony of Keith Chun on Agenda Item D-4  
Page 3

problems to later be publicly exposed, e.g., in the 2019 Audit and in the media (below are links to the Honolulu Star-Advertiser's three-part front page series on DLNR's mismanagement)

<https://www.staradvertiser.com/2018/11/20/hawaii-news/leaders-dismiss-warnings/>  
<https://www.staradvertiser.com/2018/11/19/hawaii-news/booming-market-idle-lands/>  
<https://www.staradvertiser.com/2018/11/19/hawaii-news/lease-extensions-stir-controversy/>

I have been subpoenaed to testify before the HIC on matters raised in the 2019 Audit and understand that Board members may also be called to testify. As such, you should be aware that some of the problems that may be discussed were issues that LD administrators chose not to present to the Board.

Thank you,



Keith Chun

cc: House Investigative Committee Chairperson Bellati  
House Investigative Committee Vice-Chairperson Ichiyama

# APPENDICES

**Chun, Keith K**

**From:** Chun, Keith K  
**Sent:** Tuesday, March 01, 2016 2:26 PM  
**To:** Tsuji, Russell Y; Moore, Kevin E; Hirokawa, Ian C  
**Subject:** RE: Proposed DOBOR legislation

Thanks.

FYI, I found the Hilo Hawaiian lease to be quite different from other percentage rent leases involving both private and public lands. I noticed this when I was researching percentage rent leases to support DOBOR's proposed legislation (particularly DOBOR's proposed amendment to HRS 171-36(a)(6) that requires percentage rents be calculated on all of the lessee's gross revenues, plus all of the sublessees' gross revenues).

My research included leases of both private and public lands. The public land leases included leases from DOBOR, Land Div, and DHHL. I also interviewed brokers, appraisers, bankers (including a banker for one of the investors in the Hilo Hawn) and real estate attorneys (including one of the attorneys for the lessee of the Westridge shopping center, who also developed the 500,000 sf Torrance Crossroads shopping in LA). Each person I spoke with was surprised with the requirement currently in HRS 171-36(a)(6). I also touched base with Gordon at HDLO.

I submitted the results of my research in a memo to DOBOR, but have summarized the portion of the Hilo Hawaiian lease below in case any of you are interested. Feel free to ignore any or all of it.

Hilo Hawaiian extended, restated and amended lease dated 12/29/15:

1. Base and percentage rents are both due on the 12<sup>th</sup> of each and every January and July. However, as recently as last week, SLIMS indicated no such rents were billed or paid for the base and percentage rents due on January 12, 2016. I did not look into whether an NOD has been issued.
2. Percentage rents must be paid in advance. I'm not sure how LD intends to calculate the percentage rents in advance before any revenues are earned or reported. (It's possible to do it based on estimated/projected revenues for future periods, but LD will need to do a reconciliation at the end of the actual period. This, however, does not seem to have been contemplated for the Hilo Hawaiian lease, especially since there is no language in the lease about any reconciliation).
3. There is no definition of gross revenues in the lease. Defining gross revenues is often advisable to avoid disputes in the future, especially in this lease because of the unique requirement of HRS 171-36(a)(6) re: gross revenues of sublessees and because the Hilo Hawaiian has many sublessees (i.e., a restaurant, bar, convenience store, kiosks, hair salon, etc). In addition, hotels usually want to be sure specific items are not included as part of gross revenues (e.g., GE tax, TAT, sales of furniture, etc). The Naniloa lease includes a definition of gross revenues that addresses all of these issues.
4. There is no requirement that the lessee submit gross revenue reports, so there's so no way for LD to verify the percentage rents (or do a reconciliation if the percentage rent is to be paid in advance and be based on projected revenues).
5. The lease does not provide LD with any audit rights (i.e., the right to audit the lessee's books and records, especially re: gross revenues).

1

EXHIBIT A

# APPENDICES

6. It's unusual for percentage rents to be based on revenues for periods beginning and ending in the middle of the month (i.e., the 12<sup>th</sup> of the month). That would require the lessee to prepare special gross revenue reports that are separate and distinct from their normal accounting records, which generally cover normal accounting periods (e.g. month-end, fiscal year-end). . . but since there is no revenue reporting requirement, I guess it doesn't matter.
7. LD will be entitled to percentage rents once Hilo Hawaiian's revenues exceed \$9.2 million (based on the \$182K min base rent). Per an appraisal in file, the lessee's gross revenues for 2009-2011 exceeded \$10 million in each year . . . and that is without including the sublessees' gross revenues. The appraisal also projected stabilized revenues of approx. \$12 million (again, w/o including the sublessees' revenues). As such, LD should expect to receive percentage rent payments from Hilo Hawaiian. (see #4 above . . . Hilo Hawaiian is delinquent on the base and percentage rent payments that were due on January 12, 2016.
8. There's a unique reason that I requested a "blended" rate for the Naniloa percentage rent instead of the varied percentages normally seen in hotel leases (e.g., 12% of room revs, 6% of food and beverage, 3% of concessions). Please let me know if you would like details on that issue.

In sum, I found many of these lease provisions to be uncommon in most of the leases I've seen over the years, but would be interested to know if these provisions are the trend in the industry and are being incorporated in all of the newer leases.

Thanks,  
KC

**From:** Tsuji, Russell Y  
**Sent:** Wednesday, January 27, 2016 12:36 PM  
**To:** Chun, Keith K; Moore, Kevin E; Hirokawa, Ian C  
**Subject:** RE: Proposed DOBOR legislation

Not really. Most are just standard—a percentage of gross. And Windfarms are unique and not good examples.

**From:** Chun, Keith K  
**Sent:** Wednesday, January 27, 2016 11:16 AM  
**To:** Tsuji, Russell Y <[Russell.Y.Tsuji@hawaii.gov](mailto:Russell.Y.Tsuji@hawaii.gov)>; Moore, Kevin E <[kevin.e.moore@hawaii.gov](mailto:kevin.e.moore@hawaii.gov)>; Hirokawa, Ian C <[ian.c.hirokawa@hawaii.gov](mailto:ian.c.hirokawa@hawaii.gov)>  
**Subject:** Proposed DOBOR legislation

All,

I'm working on the proposed DOBOR legislation and wanted to review some the percentage rent provisions in DLNR leases. Are there any LD leases that you would consider good examples? E.g., Westridge shopping center, Hilo Hawaiian Hotel, Naniloa, any of the car dealership leases?

Thanks,  
Keith

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***Procedures for the collection and review of percentage rent received from lessees need improvement.***

According to DLNR, there were 27 lease agreements containing percentage rent clauses (rent based on a percentage of the lessee's gross receipts) as of June 30, 2017. DLNR may require sales audits be performed by independent auditors to verify the calculation of percentage rent in accordance with the lease agreement. Otherwise, DLNR relies on self-reported revenues and percentage rent calculations contained in the certified statement of gross receipts submitted by lessees.

KKDLY noted that DLNR does not formally document its review and approval of the certified statement of gross receipts submitted by lessees to indicate that DLNR staff determined the reported revenues were reasonable and that the calculation of percentage rent was in accordance with the lease agreement. The certified statements of gross receipts should identify the DLNR staff who reviewed them and the dates of the review. For practical reasons, the level of review will vary depending on the percentage rent due.

DLNR should establish documented procedures related to the collection of percentage rents due from lessees to provide a clear, consistent timeframe for the receipt of sales audit reports and certified statement of gross receipts for all leases with percentage rent clauses. DLNR should also have procedures to follow if lessees fail to submit required sales audit reports, certified statements of gross receipts, or payment of the required percentage rent.

***Revenues from ceded lands have not been transferred to the general fund.***

Twenty percent of the revenues DLNR receives from certain leases and permits of ceded lands are required to be transferred to the Office of Hawaiian Affairs (OHA). The remaining 80 percent of those ceded land revenues are held by the State as a public trust for the following purposes: (1) support of public education; (2) betterment of the conditions of Native Hawaiians; (3) development of farm and home ownership; (4) public improvements; and (5) provision of lands for public use.

KKDLY found that from FY2015 through FY2017, DLNR received \$47.1 million in revenue from the ceded lands that it manages. In each of those three years, the department remitted to OHA an average of \$3.1 million, for a total of \$9.4 million, which was 20 percent of the ceded lands revenue, as required by law.

## ADC Response to Draft Report

January 14, 2022

TO: Chairperson Della Au Belatti and Members of the House Investigative Committee

FROM: State of Hawai'i, Agribusiness Development Corporation

RE: Response to Draft Report of the House Investigative Committee Established Under House Resolution 164, due January 14, 2022

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First, the Agribusiness Development Corporation (ADC) would like to thank the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01 (Committee) for the opportunity to provide comments on the Draft Report issued pursuant to HR 164 (2021 Legislative Session). ADC admits that the audit process, followed by the work of this Committee, has been a long and arduous series of events. As repeatedly noted during this process, historically, ADC has been an under-staffed agency of which much is expected. This experience has brought to light procedural shortcomings that ADC intends to address. As noted in the Closing Statement of James J. Nakatani, Executive Director Agribusiness Development Corporation, the twenty-eight ADC recommendations issued in Audit Report No. 21-01 have been analyzed, for the most part addressed, and change has been implemented.

As a point of clarification, ADC would note that on page 2 of the Draft Report, the Committee references four findings made by the Auditor in regards to ADC. The Audit Report only had three findings.

That being said, ADC appreciates the work of the Committee and offers the following comments in regards to Chapter 3 of the December 30, 2021 Draft Report of the House Investigative Committee Established Under HR 164 (pages 20 – 37).

### REFERENCES TO THE HAWAII DEPARTMENT OF AGRICULTURE:

The Draft Report includes numerous references to the Hawai'i Department of Agriculture (HDOA). As an agency administratively attached to HDOA, ADC values its relationship with HDOA and is working hard to be an asset to the department charged with the responsibility of leading Hawai'i's agricultural community. ADC notes that where the Committee has found a duplication of efforts between HDOA and ADC, those efforts should be undertaken by the agency with superior resources, which in most cases would be HDOA. ADC will continue to assist HDOA as needed to be of service to the agricultural community. Specific references to HDOA are addressed below:

On page 21, it is suggested that ADC and HDOA collaborate in marketing research, and that HDOA assist ADC in preparation of ADC's statutorily required Hawai'i Agribusiness Plan. (See section 163D-5, *Hawaii Revised Statutes* (HRS)). It is further suggested that the Hawai'i Agribusiness Plan be prepared and posted on the ADC

website by July 1, 2024, updated by July 1, 2028, and revisited every five years thereafter. ADC has no objection to collaborating with HDOA on any matters that will benefit the agricultural community.

On page 22, the Committee has offered three methods of dealing with the preparation of the Hawai'i Agribusiness Plan. All of these methods involve collaboration with HDOA. ADC has no objection to collaborating with HDOA on any matters that will benefit the agricultural community.

On page 23, it is recommended that ADC collaborate with HDOA on developing short-term and long-term plans that are to be included in the Hawai'i Agribusiness Plan. It is further noted that the Hawai'i Agribusiness Plan should be directed towards ADC's efforts and not the state agricultural industry as a whole. ADC has no objection to collaborating with HDOA on any matters that will benefit the agricultural community. ADC is aware that the responsibility for preparing the Hawai'i Agribusiness Plan has been delegated to ADC by section 163D-5, HRS, and therefore the plan's focus will remain on ADC's efforts rather than HDOA's statewide efforts.

On page 25, the Committee notes that section 163D-5(a), HRS, contains duplicative requirements that are simultaneously assigned to HDOA and ADC. ADC acknowledges this duplication of efforts and agrees that duplication facilitates a waste of resources. The Committee goes on to recommend that HDOA, as the larger agency with greater resources, assist ADC in its planning efforts. ADC has no objection to collaborating with HDOA on any matters that will benefit the agricultural community.

On pages 26-27, the Committee discusses the oversight of ADC projects, plans, and programs by the Hawai'i Board of Agriculture (HBOA) as required by section 163D-8.5, HRS. ADC believes this duplicate oversight is another source of wasted resources. Three HBOA members also sit on the ADC Board. All proposed decisions related to ADC projects, plans, and programs are conducted at public meetings as required by chapter 92, HRS. In addition, ADC annually updates the HBOA as to its projects, plans, and programs. Having both boards review every item is time-consuming and would delay progress unnecessarily. As a time and cost saving measure, section 163D-8.5, HRS, should be repealed.

#### **ENABLING LEGISLATION:** (pages 20 – 28)

**Refocusing, Updating, and Streamlining ADC's Authorizing Statute:** (pages 20-21)  
ADC agrees that the authorizing statute is in need of change. As originally conceived chapter 163D, HRS, was directed towards export replacement (sugar and pineapple) rather than meeting the needs of local food production. Food sustainability has become an important goal of local agricultural production and the statute must evolve to reflect that change in focus.

**Planning:** (pages 21-22) As currently drafted, section 163D-5, HRS, requires ADC to prepare an Agribusiness Plan and sets forth a minimum of nine areas to be included in the plan. Additionally, section 163D-19, HRS, requires ADC to annually submit a complete and detailed

report of its plans and activities to the governor and legislature. While not mandatory, section 163D-7, HRS, permits ADC to prepare Business and Development Plans for its projects.

As to the mandatory report to the legislature required under 163D-7, ADC admits it has been inconsistent in submitting the required reports, but would note that for the last several years this omission has been rectified. It should also be noted that the ADC's annual accomplishments have historically been included through HDOA's yearly report to the Legislature.

As to the mandatory Agribusiness Plan set forth in section 163D-5, HRS, the committee suggests that five of the nine minimum areas required to be included in the plan be repealed. The five areas sought to be eliminated from the Agribusiness Plan (financial programs; marketing strategies; displaced worker programs; transportation services; and data collection) are functions already within the purview of HDOA. ADC agrees that where services provided by HDOA and ADC are duplicative, the agency with the greater resources should lead the effort.

*Current Planning:* (pages 22-23) ADC prepared the Hawai'i Agribusiness Plan for 2021, which is currently posted on the ADC website. ADC recognizes the importance of such a plan and welcomes the collaboration of stakeholders in revisiting the plan every five years. ADC agrees that the Hawai'i Agribusiness Plan should be focused on ADC's contribution to the agricultural industry.

*Auditor Recommendations and Statutory Amendments:* (pages 23-25) As noted above, ADC agrees that where services provided by HDOA and ADC are duplicative, the agency that is able to designate more resources to the duplicate service should lead the effort.

*Planning Facilitation:* (pages 25-26) Through footnote 10 of the Closing Statement of James J. Nakatani, ADC attempted to correct the record regarding the availability of a Planner Position within ADC. ADC reiterates that there is no Planner Position within the current legislatively approved ADC management structure. There is an Asset Manager position, which is currently unfunded. All other ADC personnel positions are filled.

ADC does not believe that preparing and/or updating its Hawai'i Agribusiness Plan every five years justifies a full-time planner position. Currently, ADC is required to produce one plan, the Hawai'i Agribusiness Plan pursuant to section 163D-5, HRS, and one report, the Annual Report pursuant to section 163D-19, HRS. The Committee suggests that ADC also prepare Agricultural and Business Development Plans pursuant to section 163D-7, HRS. ADC would note that plans drafted in accordance with section 163D-7, HRS, are discretionary.

The Committee has offered several different ways of assisting ADC in its planning functions, such as funding a new planner position at the Office of Planning and Sustainable Development, or retaining a consultant to assist in development of the plan with short and long term goals. ADC believes the procurement of a subject matter expert to assist in updating the 2021 Hawai'i Agribusiness Plan, and every five years thereafter,



would be the most cost-efficient method of preparing these plans. A consultant could also assist ADC in preparing Agricultural and Business Development plans when desirable.

Placing a planning position within the Office of Planning and Sustainable Development to assist ADC with its planning activities may be advantageous, where the planner would be available to help other agencies. But there simply will not be enough work available to support such a position solely for ADC.

Report: (pages 26-27) As noted above, the Annual Report to the Legislature as required by section 163D-19, HRS, has been incorporated into ADC's annual work product. ADC will continue to produce one report to be included in HDOA's report to the legislature, and one report on ADC's yearly activities to be submitted directly to the legislature.

Board of Director, Executive Director, and Staff: (pages 27-28) The Committee suggests that the ADC Board provide greater oversight of the Executive Director. The ADC Board has instituted annual reviews of the Executive Director and staff. Additionally, the recent change in Board leadership has revitalized the Board's oversight capacity and provided an opportunity for greater participation by stakeholders.

As noted above, all ADC positions have been filled, with the exception of the unfunded Asset Manager position. It is ADC's goal to remain fully staffed at all times.

ADMINISTRATIVE: (pages 29-35)

Mission Statement: (page 29) ADC agrees that the Mission Statement, as an expression of the agency's present goals and strategies, should be revisited every five years.

Written Policies and Procedures and Administrative Rules: (pages 29-31) ADC agrees, and indeed has already begun revising and expounding on its policies. As for administrative rules, currently, HRS sections 163D-4(a)(4)<sup>1</sup> and 163D-8(c) & (e)<sup>2</sup>, provide ADC the authority to promulgate administrative rules. ADC can attempt to prepare administrative

<sup>1</sup> In relation to the **powers** generally granted to ADC, section 163D-4(a), HRS states: "Except as otherwise limited by this chapter, the corporation may . . . (4) Adopt rules under chapter 91 necessary to effectuate this chapter in connection with its projects, operations, and properties[.]"

<sup>2</sup> In relation to a **project facility program** developed by ADC, section 163D-8, HRS states: "(c) Unless and except as otherwise provided by law, the corporation may adopt rules pursuant to chapter 91 to establish the method of undertaking and financing project facilities in a project area. . . . (e) The rules adopted pursuant to this section may include, but are not limited to: (1) The methods of establishing assessment areas within a project area; (2) The method of assessing real properties specially benefited; (3) The costs to be borne by the corporation, the county, in which the project facilities are situated, and the property owners; (4) The procedures before the corporation relating to the creation of the assessment areas by the owners of real property therein, including provisions for petitions, bids, contracts, bonds, and notices; (5) Provisions relating to assessments; (6) Provisions relating to financing, such as bonds, the Hawai'i agricultural development revolving fund, advances from available funds, special funds for the payment of bonds, the payment of principal and interest, and the sale and use of bonds; (7) Provisions relating to funds and the refunding of outstanding debts; and (8) Provisions relating to limitations on time to sue, and other related provisions."

rules that set forth the procedures to be followed when implementing powers pertaining to the projects, operations, and property activities enumerated in section 163D-4(a)(4), HRS.

However, as has been uncovered in the course of these investigative hearings, the extent and focus of these activities are yet unclear, at least to ADC. For instance, it remains unclear to ADC whether it is to focus on commercial farming and doubling food production or on small farmers. Further, if ADC is to focus on small farmers, it is unclear whether a small farmer is defined by farm gate value or acreage. In short, attempting to establish the focus of these activities via rules may be premature. With respect to rules governing financing, this activity, too, may be somewhat premature. ADC agrees that before embarking on such financing, possibly in the future, rules should be promulgated.

**Electronic Database and Filing System:** (page 31-32) ADC has procured the services necessary to develop and implement a land management system similar to the one successfully developed for use by the Department of Land and Natural Resources. This is an ongoing project that offers a vast improvement over the recordkeeping methods relied upon in the past.

With the departure of ADC's long time secretary, and the realization of how inadequate file maintenance is debilitating to an agency's effectiveness, ADC has devised a system of document management, primarily through electronic means, and designated employee responsibility for appropriate file management.

**Filing System:** (page 32) As noted above, ADC is in the process of creating an electronic document management system.

**Standardized Lease or License Template:** (pages 32-33) ADC acknowledges the benefits to be obtained from updating the various land utilization documents (Licenses, Revocable Permits, Rights-of-Entry) and is currently undertaking a review of these documents.

**Property Management:** (pages 33-35)

**Agricultural Cooperatives:** ADC recognizes the colossal success of the Kauai Agriculture Cooperative (KAA) may lead to speculation that this success could be recreated in other circumstances. As ADC has come to realize, it is the unique characteristics of the KAA membership that permits this success. The Kalepa Coalition has not enjoyed the same degree of success. It is the willingness of the membership and the financial resources available to those members that leads to success. Chapter 421, HRS, provides an opportunity for entities engaged in agricultural production to form a cooperative. Pursuant to section 421-3, HRS, ADC is not qualified to establish an agricultural cooperative as it is not "engaged in agriculture as bona fide producers of agricultural products[.]"

The establishment of an agricultural cooperative should remain the prerogative of the farmers, not something that ADC should be required to do. ADC will continue to educate farmers on the benefits to be achieved by creating an agricultural cooperative, but

it must be remembered that the success of a cooperative is wholly dependent upon the collective efforts of the members themselves.

*Private Property Manager:* (pages 34-35) ADC has opted to utilize the services of an in-house property manager rather than retain a private property management company. ADC acknowledges that the management of over 20,000 acres of land by one person is unwieldy. However, the establishment of a second property management position within ADC would alleviate this hardship without inserting an extra layer of bureaucracy within the management function.

**Training:** (page 35)

*Board Training:* ADC agrees that its Board of Directors should receive training on the State's Open Meeting laws. The current Board has received copies of chapter 92, HRS; has received instruction on the specific requirements established by chapter 92, HRS; and has received video instruction on the recent updates to the Sunshine Law. ADC acknowledges this training responsibility is an ongoing obligation that will continue to be met.

*Staff Training:* ADC agrees that its employees should receive training on the Procurement Code. All ADC employees with procurement responsibilities have received the required training. ADC acknowledges this training responsibility is an ongoing obligation that will continue to be met.

**OMISSIONS:** (pages 35-37)

**Audit of Kauai Land and Water Portfolio:** ADC acknowledges that its Kauai properties are a large part of ADC's land management and control responsibilities. While the Kauai lands were omitted from the audit, the auditor's recommendations as set forth in Audit No. 21-01 are equally applicable to the Kauai properties. ADC requests that any audit of ADC's Kauai holdings be delayed until 2024 so that applicable recommendations from Audit No. 21-01 may be implemented. It is ADC's fervent hope that any subsequent audit be conducted in a professional and supportive manner.

As noted above, the audit process caused a lengthy disruption to the everyday workings of the ADC office. Should an audit of the Kauai properties be immediately undertaken ADC will lose the opportunity to devote significant resources to addressing the issues raised in Audit No. 21-01. Given the applicability of the auditor's recommendations to all ADC holding, ADC requests the opportunity to implement the lessons learned under Audit No. 21-01 before undertaking another audit.

## KMH LLP Response to Draft Report



A Hawaii Limited Liability Partnership

January 14, 2022

Representative Della Au Belatti  
Chairperson  
House Legislative Committee to Investigate Compliance with Audits Nos. 19-12 and 21-01  
Hawaii State Capitol, Room 439  
415 South Beretania Street  
Honolulu, Hawaii 96813

*Via email*

Dear Representative Belatti:

Thank you for the opportunity to review the draft Report of the House Investigative Committee established under HR164 ("Draft Report"). In my review of the Draft Report I focused specifically on matters relating to KMH LLP or my testimony and would like to provide the following comments for the Committee's consideration:

- 1) Page 16 – In the course of assisting the DLNR fiscal team in preparing for the June 30, 2017 financial statement audit, we attended numerous meetings with DLNR fiscal management and in those meetings we made suggestions focused on improving certain accounting practices, however, these suggestions were not formally documented nor issued in writing to DLNR.

Accordingly, given the absence of formal written recommendations it may not be possible to independently validate that DLNR maintained or adopted these suggestions as recommended by the Draft Report.

- 2) Page 36 – There is an open note that indicates forthcoming discussion that 3 of the outstanding matters that delayed the ADC financial audit work were all Kauai related matters. These 3 matters were document requests that Accuity made of ADC management and did not involve KMH.
- 3) Page 40 – There is an open note that indicates forthcoming discussion relating to the delay of the Accuity financial audit. When this section is completed, to the extent that commentary relies or refers to my testimony given on December 15, 2021 describing the status of the work KMH provided to ADC, please consider the corrections to that testimony included in letters, dated December 17, 2021 and December 27, 2021, previously sent to the House Committee.

I appreciate the opportunity to review the Draft Report and to provide the aforementioned comments. I look forward to receiving the final version of the report.

Best Regards,

A handwritten signature in black ink, appearing to read 'R. R. Murakami', written over a horizontal line.

Ross Murakami

1003 Bishop Street ■ Suite 2400 ■ Honolulu, HI 96813 ■ Telephone: 808-526-2255 ■ Fax: 808-536-5817 ■ [www.kmhllp.com](http://www.kmhllp.com)

# APPENDICES

## Office of the Auditor Response to Draft Report<sup>267</sup>

STATE OF HAWAII  
OFFICE OF THE AUDITOR  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813-2917



LESLIE H. KONDO  
State Auditor  
(808) 587-0800  
lao.auditors@hawaii.gov

January 6, 2022

### VIA EMAIL

The Honorable Della Au Belatti, Chair	(repbelatti@capitol.hawaii.gov)
The Honorable Linda Ichiyama, Vice Chair	(repichiyama@capitol.hawaii.gov)
The Honorable Mark J. Hashem, Member	(rephashem@capitol.hawaii.gov)
The Honorable Dale T. Kobayashi, Member	(repdkobayashi@capitol.hawaii.gov)
The Honorable Val Okimoto, Member	(repokimoto@capitol.hawaii.gov)
The Honorable Amy A. Perruso, Member	(repperruso@capitol.hawaii.gov)
The Honorable David A. Tarnas, Member	(reptarnas@capitol.hawaii.gov)
The Honorable Kyle T. Yamashita, Member	(repyamashita@capitol.hawaii.gov)

House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: Draft Report received December 30, 2021

Dear Members:

The draft report of the Committee's "findings and recommendations" emailed by Chair Della Au Belatti at 5:16 p.m. on December 30, 2021, is an incomplete document. Although the draft is subtitled "findings and recommendations," it contains *no* findings. It includes recommendations with no content ("The Committee recommends ..." followed by blank space) and contains numerous other portions that are placeholders and editorial notes. The draft report's "final conclusions" are missing altogether. In other instances, the recommendations feature options ("should/should not") for the Committee to choose.

The Committee's rules require it to "make available to all those entities and interested persons who were the subjects of or who testified at any hearing a draft report of the Committee's findings and recommendations concerning any matter that is the subject of its hearings." Committee Rule 2.7(d). Those rules also afford witnesses who testified during the hearings "no less than 14 days within which to make written responses to the draft findings and recommendations." Committee Rule 2.7(e).

We cannot reasonably comment on a document that is unfinished and incomplete. We cannot offer comment to findings and recommendations that have yet to be drafted. The final report submitted to the House of Representatives will be significantly different from the incomplete draft that was provided to us. If nothing else, it will presumably include the Committee's

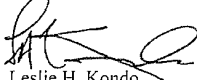
# APPENDICES

House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01  
January 6, 2022  
Page 2

findings and recommendations. Providing us with an unfinished and incomplete document defeats the rationale of notice and an opportunity to offer meaningful comment.

We are aware that the committee has noticed a meeting on Monday, January 10, to discuss the draft report. We hope the committee will decide to comply with its own rules and provide us with a complete and finished draft of the report, one to which we can reasonably provide comments.

Very truly yours,



Leslie H. Kondo  
State Auditor

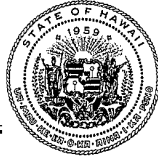
cc: Members of the House of Representatives  
Members of the Senate

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<sup>267</sup> The Office of the Auditor's response to the Committee's Draft Report on January 14, 2022, included screenshots of the Committee's Draft Report. Rule 2.7(e) of the Committee's Rules require the Committee to attach written responses to the Committee's Draft Report as an appendix to its Final Report. However, pursuant to the Committee's Rules and section 92F-13, HRS, the Committee does not authorize the disclosure of its draft report and voted on January 28, 2022, to deny a UIPA request for the Committee's Draft Report. Therefore, the Committee has redacted the screenshots of the Committee's Draft Report in the Office of the Auditor's response attached.

# APPENDICES

STATE OF HAWAII  
OFFICE OF THE AUDITOR  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813-2917



LESLIE H. KONDO  
State Auditor  
(808) 587-0800  
lao.auditors@hawaii.gov

January 14, 2022

VIA EMAIL

The Honorable Della Au Belatti, Chair	(repbelatti@capitol.hawaii.gov)
The Honorable Linda Ichiyama, Vice Chair	(repichiyama@capitol.hawaii.gov)
The Honorable Mark J. Hashem, Member	(rephashem@capitol.hawaii.gov)
The Honorable Dale T. Kobayashi, Member	(repdkobayashi@capitol.hawaii.gov)
The Honorable Val Okimoto, Member	(repokimoto@capitol.hawaii.gov)
The Honorable Amy A. Perruso, Member	(repperruso@capitol.hawaii.gov)
The Honorable David A. Tarnas, Member	(reptarnas@capitol.hawaii.gov)
The Honorable Kyle T. Yamashita, Member	(repyamashita@capitol.hawaii.gov)

House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: Office of the Auditor's Response to Draft Report of the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01

Dear Members:

Please find attached a copy of the Office of the Auditor's Response to Draft Report of the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 12-01 ("Response").

This Response is being submitted to the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01 ("HIC") pursuant to Chair Della Au Belatti's December 30, 2021 letter (citing Rule 2.7(e) of the Rules of the Committee), which requested that we provide a response to HIC's draft report, received by our office on December 30, 2021, no later than 9:00 a.m. on Friday, January 14, 2022.

If you have any questions about this Response, please contact me.

Very truly yours,

Handwritten signature of Leslie H. Kondo in black ink.

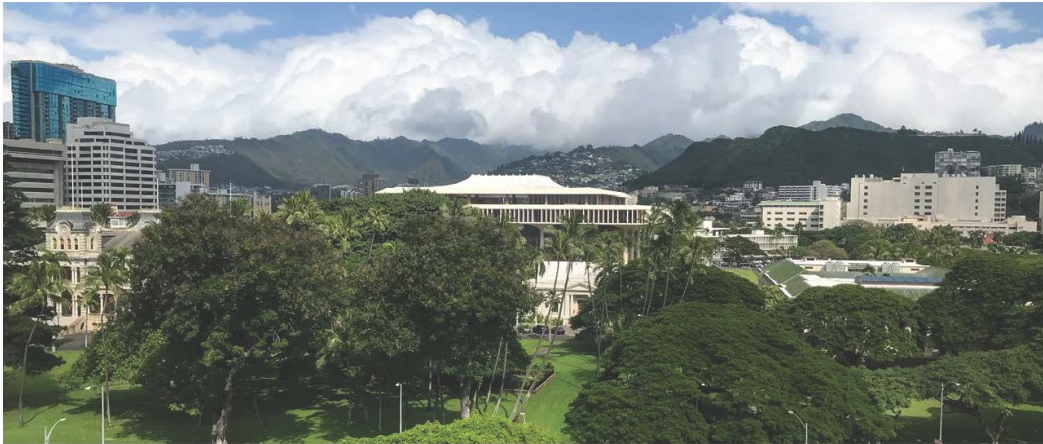
Leslie H. Kondo  
State Auditor

Attachment

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## Office of the Auditor's Response to Draft Report of the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01

Written Response  
January 14, 2022



**OFFICE OF THE AUDITOR**  
STATE OF HAWAII





## OFFICE OF THE AUDITOR STATE OF HAWAII

### Constitutional Mandate

Pursuant to Article VII, Section 10 of the Hawai'i State Constitution, the Office of the Auditor shall conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions.

The Auditor's position was established to help eliminate waste and inefficiency in government, provide the Legislature with a check against the powers of the executive branch, and ensure that public funds are expended according to legislative intent.

Hawai'i Revised Statutes, Chapter 23, gives the Auditor broad powers to examine all books, records, files, papers and documents, and financial affairs of every agency. The Auditor also has the authority to summon people to produce records and answer questions under oath.

### Our Mission

*To improve government through independent and objective analyses.*

We provide independent, objective, and meaningful answers to questions about government performance. Our aim is to hold agencies accountable for their policy implementation, program management, and expenditure of public funds.

### Our Work

We conduct performance audits, which examine the efficiency and effectiveness of government programs or agencies, as well as financial audits, which attest to the fairness of financial statements of the State and its agencies.

Additionally, we perform procurement audits, sunrise analyses and sunset evaluations of proposed regulatory programs, analyses of proposals to mandate health insurance benefits, analyses of proposed special and revolving funds, analyses of existing special, revolving and trust funds, and special studies requested by the Legislature.

We report our findings and make recommendations to the governor and the Legislature to help them make informed decisions.

*For more information on the Office of the Auditor, visit our website:*  
<https://auditor.hawaii.gov>

COVER PHOTO: OFFICE OF THE AUDITOR



PHOTO: OFFICE OF THE AUDITOR

## Office of the Auditor’s Response to Draft Report of the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01

### I. Introduction

We welcome the committee’s efforts to understand the significant agency dysfunctions brought to light by Audit Reports Nos. 19-12 and 21-01, as the House of Representatives requested in House Resolution No. 164. We welcome the committee’s efforts to remedy those dysfunctions through statutory revisions or other means.

We do not welcome what appears to be the use of an investigative committee as a vehicle for a personalized attack on the Auditor and a generalized attack on the Office of the Auditor. Investigative committees should never be vehicles for personal or political animus.

**“Investigative committees should never be vehicles for personal or political animus.”**

Written Response / January 14, 2022 1

To the contrary, state law requires investigative committees in Hawai'i "to perform properly the powers and duties vested in them." Hawai'i Revised Statutes (HRS) § 21-3. One conspicuous duty is that committees must conduct their proceedings "in a fair and impartial manner." HRS § 21-3. Here, the process was anything but fair and impartial, and the draft report even less so. Legislative committees should comply with state law. That should not be a controversial proposition.

The many problems with the draft report, and with the committee's proceedings, go beyond the significant but presumably unintentional pattern of mistakes and oversights, or even the intentional innuendo and animus, detailed below. Instead, the draft report offered by the chair,<sup>1</sup> and the proceedings she presided over, bear all the indicia of a deliberate political "hit job."

We realize that not all members of the committee share the chair's insistence on misusing the committee in order to, in part, perpetrate an unwarranted and political attack on the Auditor and on the Office of the Auditor. We appreciate their sincere and dedicated attempts to get to the bottom of the problems at the Department of Land and Natural Resources (DLNR) and the Agribusiness Development Corporation (ADC) revealed by the respective audits. We apologize to those members if their good work seems tarred by our necessary effort to call out the chair's transparent attempts to create a pretext for further "investigation" of the Auditor and the Office of the Auditor, and those that have willingly supported those attempts.

### **Unfair and not-impartial committee proceedings**

Recently, the committee's proceedings have departed even more markedly from being conducted in a "fair and impartial manner." The January 10, 2022, hearing at one point descended into a circus-like atmosphere when the chair threatened to refer the Auditor for prosecution on charges of tampering with a witness. The chair, the committee, and the witness in question all know full-well that the witness changed his sworn testimony to more accurately reflect the actual facts, not to distort, falsify, or obscure them. We know that because the witness put his corrected testimony on the record while under oath.

Nonetheless, the chair seized on the opportunity to imply that the Auditor had tampered with the witness. She then engaged in a scripted set of limited questions to the witness, apparently rehearsed but

<sup>1</sup>The committee's hearing on January 10, 2022 appeared to confirm that the draft report is Chair Della Au Belatti's draft report, not one that the other members of the committee had even reviewed and certainly had not approved.



## “Confidential” by House Rules... ?

ACCORDING TO CHAIR BELATTI, the incomplete and unfinished draft of the committee’s report emailed to us at 5:16 p.m. on December 30, 2021, is “not a public document at this time” and she claims that disclosure of the draft report “will be considered a violation of Rules 4.4 and 4.5 of the Committee’s Rules.” While Chair Belatti understandably may want to hide the defective draft from the public, and even from other legislators, that desire is not based on any legal authority, and especially not the cited committee rules.

Committee Rule 4.4, *Confidential Information*, protects certain information received by the committee. Specifically, the rule states, “All information of a defamatory or highly prejudicial nature *received by or for the Committee* other than in a public hearing or closed hearing shall be deemed to be confidential. No such information shall be made public unless authorized by the majority vote of the authorized membership for legislative purposes or unless its use is required for judicial purposes.” Emphasis added. By its express and unambiguous language, the rule relates to defamatory or highly prejudicial information “received by or for the Committee.” It does not apply to defamatory or highly prejudicial information *produced by the committee* (or any information provided by the committee).

Committee Rule 4.5, *Disclosure of Committee Activities to the Public and the Media*, similarly does not prohibit disclosure of the draft report by the Office of the Auditor or any other entity that received the document from the committee. Rule 4.5 states, “All information of official actions, statements, or positions *of the Committee* shall be made by the Chair, unless otherwise authorized.” Emphasis added. Although titled “Disclosure of Committee Activities to the Public and the Media,” the rule is clearly intended for and applicable to the members of the committee, not others. By its language, it applies to “official actions, statements, or positions *of the Committee*,” not actions, statements, or positions of the Office of the Auditor or others. The committee certainly cannot abrogate rights guaranteed under the United States and Hawai‘i Constitutions, such as the freedom of speech. Likewise, the committee is not empowered to declare selective documents to be “confidential” that are public documents under the Uniform Information Practices Act (Modified), Chapter 92F, HRS, which is Hawai‘i’s version of the Federal Freedom of Information Act.

At the committee’s hearing on January 10, 2022, Chair Belatti accused the Auditor, the office’s General Counsel, and the attorney representing the Office of the Auditor of violating the committee rules cited above based on the Auditor’s letter to the committee, which was copied to all members of the Senate and House, regarding the incomplete and unfinished state of the draft document about which the Office of the Auditor is expected to comment, questioning how the office can reasonably respond to portions of the draft that have yet to be drafted. Not only are Chair Belatti’s accusations against the Auditor and others baseless, they once again highlight her attempt to misdirect what should be the committee’s concern – how the Office of the Auditor and others can reasonably respond to the incomplete and unfinished draft.

At the committee’s hearing on January 10, 2022, Chair Belatti also accused the Auditor of making an unauthorized disclosure of a portion of the draft document to KMH LLP. However, it was Chair Belatti who emailed the Office of the Auditor and KMH LLP an identical draft document on December 30, 2021.

## Evidentiary findings missing in action

**FINDINGS ARE** based on criteria; in government auditing this generally starts with the statutory provision that created the program – determining what the program's mission is and how the Legislature intended the program to achieve it. Using those criteria, auditors assess whether the program's performance is effective and efficient, among other things. Findings must be supported by sufficient and appropriate *evidence* – not unsupported speculation and innuendo. And that evidence is subject to a rigorous internal quality control process, as is virtually every individual sentence in our reports.

definitely designed to reinforce the false impression that the Auditor had engaged in nefarious criminal conduct. She then threatened the Auditor with a referral for prosecution for witness tampering. Maybe this makes for what the chair considers good political theater. But it is in fact an abuse of power, and everyone knows that.

This “investigation” may represent a new low in Hawai‘i power politics. It is in its way, sadly, reminiscent of that famous slogan, “show me the man and I’ll show you the crime.” A chair and a committee interested in the actual facts would not be attempting to bludgeon the Auditor through threats of criminal prosecution for promoting a true and more accurate record of the proceedings. Something is very wrong with this picture, and you do not have to be an avid political observer to notice that fact. We hope the committee’s future proceedings don’t descend even further, from a circus-like atmosphere to one more resembling a show-trial.

The committee’s draft report shows that it conducted its proceedings in anything but a fair and impartial manner. To take a simple example, the committee’s draft report is entirely devoid of any findings whatsoever – despite the fact that the report is subtitled “findings and recommendations.” That violates the committee’s own rules and deprives us of a fair opportunity – that is, *any* meaningful opportunity – to comment on the report’s contents. The effect will be to leave unchallenged *virtually every factual finding* that eventually appears in the final report.

There is no world in which this can be construed as fair. It certainly cannot be characterized as professional. The final report will be nothing like the draft that we were provided for purposes of our comments. That is a fundamental violation of the statutory requirement of fair proceedings. We have not been provided a fair opportunity to comment. We cannot offer adequate critique or comment on findings that have yet to be drafted and on recommendations that were, in turn, drafted in the absence of facts. In the legal context, the procedure used by the committee in providing its draft knowing it will have little resemblance to the final report is called “sandbagging” an opponent. No one views it as a fair and impartial procedure.

In addition, the draft features “commentaries” that appear to serve as a substitute for formal findings; those “commentaries” are riddled with misinterpretations, errors, and inaccuracies. We detail many of them below. Some of them contain remarkably unfair and inaccurate insinuations and innuendo regarding the Auditor under the cover of “commentary.” We examine many of those below as well.

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In the auditing profession, rigorous findings are the prerequisite for formulating recommendations. The recommendations flow from, and develop out of, the factual foundation for those findings and are intended to address the causes of the reported issues. The recommendations are not first arrived at by some other ulterior process or motive and then later retrofitted with matching findings or “commentary.” That is because, in the auditing profession, the process is designed to arrive at objective results, not pre-determined ones.

**We are already regularly peer-reviewed by professionals with experience in performance auditing**

We are a professional office staffed by professionals in the accountability profession. Our auditors must complete a minimum of 80 hours of continuing professional education in every 2-year period, 56 hours of which must directly enhance auditors’ professional expertise. As the Auditor repeatedly explained to the committee in his testimony, we are subject to regular professional peer reviews by external accountability professionals. Those accountability professionals are government auditors from other jurisdictions, and those reviews are thorough and exacting. They must be conducted by independent reviewers who have experience in conducting government performance audits. The National Conference of State Legislatures’ 2019 peer review of our office examined samples of our reports, as well as the processes that underlie the reports, to determine whether they met five criteria: (1) Work is professional, independent, and objectively designed and executed. (2) Evidence is competent and reliable. (3) Conclusions are supported. (4) Products are fair and balanced. (5) Staff is competent to perform work required.

The peer reviews conducted during the Auditor’s tenure have been uniformly positive. The results are publicly accessible through the Office of the Auditor’s website, which the committee could have easily reviewed. The results are starkly at odds with the dark narrative painted by the committee concerning the professionalism of both the Auditor and the Office of the Auditor. Our 2016 peer review concluded, “The Hawaii Office of the Auditor conducts its performance audits in accordance with the generally accepted government auditing standards for performance audits contained in the *Government Auditing Standards* (2011 Revision), internal operating guidelines and professional best practices.” The 2019 peer review arrived at the same conclusion.

As noted, those results are not compatible with the pattern of insinuations and innuendo of unprofessionalism concocted by some members of the committee and presented so luridly in the draft report.

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**“When an investigative committee acts outside those powers, that is by definition an abuse of power.”**

Perhaps unsurprisingly, the draft report’s chapter 4, “Office of the Auditor,” mentions none of these thorough and positive peer reviews. This pattern of omissions is indefensible. Key omissions like that cannot be accidental, and they also cannot reasonably be construed as fair and impartial.

### **Crafting a convenient narrative versus rigorously verifying fact**

Anyone can start with a particular narrative and then cherry-pick and force-fit facts to support that narrative. The rigorous quality control and verification procedures used in professional auditing make that technique impossible to use. Every sentence of every report is rigorously and meticulously verified by an analyst not associated with the subject audit. The independent reviewer must maintain an objective attitude with respect to the audit, work independently, and not have involved discussions with the project team about the findings and work performed. The loose and malleable procedures used by the committee, in contrast – “commenting” on recommendations unsupported by facts – facilitate the use of slanted storytelling over rigorous fact-finding.

It is noteworthy that Representative Dale Kobayashi, the only professional auditor on the committee, has concluded that chapter 4 of the draft report, “Office of the Auditor,” is mostly “innuendo” that “seemed designed to cast a negative light on the Office of the Auditor.”<sup>2</sup> His own professional assessment of the defects in draft chapter 4 went further. “Much of what was said pertaining to the auditor was way over the line and can even be construed as defamatory.” His assessment of the draft as a whole? “Much of what is said in this report is incorrect and improper.”<sup>3</sup> This is not the kind of report that should be used as the basis for far-reaching policy changes.

To be honest, we believe the people of Hawai‘i are tired of these kinds of political machinations and maneuvers. But that is an assessment politicians themselves are best equipped to make. They are “peer-reviewed,” so to speak, by the voters. In contrast, our business as auditors – as accountability professionals – is to continue performing our job of providing fact-based and meaningful analyses that give independent and objective answers to questions about government performance. Our job is to continue to conduct audits that meet and exceed the expectations of the independent and professional external auditors who regularly peer-review the quality of our work.

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<sup>2</sup> <https://www.civilbeat.org/2022/01/house-may-ask-ag-to-probe-alleged-criminal-conduct-by-state-auditor/>

<sup>3</sup> *Id.*

## Been There, Done That

THE GOVERNMENT AUDITING STANDARDS promulgated by the Comptroller General of the United States, often referred to as the Yellow Book, require government audit organizations conducting audits in accordance with generally accepted government auditing standards to have an external peer review *at least once every three years*. It means external reviews conducted by competent audit professionals from other state audit offices are *already* an integral and regular part of the Office of the Auditor's existing process to ensure that its performance as an audit office meets or exceeds professional standards for quality and professionalism in government auditing and accountability. The Office of the Auditor has undergone two peer reviews during the Auditor's tenure, the most recent in 2019.

In 2019, the peer review team described its work as follows:

*This peer review compared the office's policies and performance to Yellow Book requirements and the knowledge base of peers from similar offices. The review provided a collective assessment of the office's quality assurance and review processes, those quality processes were used to develop the office's performance audits, and the qualifications and independence of staff.*

Specifically, the peer review team sought to determine whether the sample of reports reviewed, as well as the processes that underlie the reports, met the following criteria:

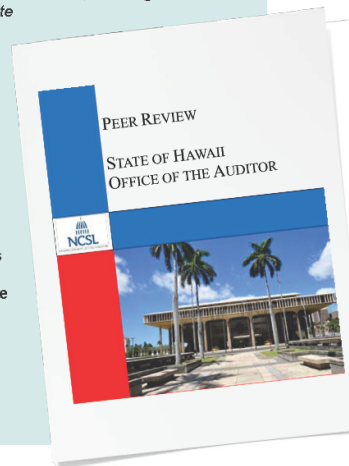
- 1) Work is professional, independent, and objectively designed and executed.
- 2) Evidence is competent and reliable.
- 3) Conclusions are supported.
- 4) Products are fair and balanced.
- 5) Staff is competent to perform work required.

The 2019 peer review team reported many positive aspects of the office's work, including the work atmosphere. The team also noted, *"The Office of the State Auditor includes experienced, well-educated staff. The staff's diverse backgrounds and skills are beneficial to the Office of the State Auditor. The staff assigned to perform audits collectively possess adequate professional competence for the tasks required."*

The peer review team also concluded:

**In the peer review team's opinion, the Hawai'i Office of the Auditor has a quality control system that is suitably designed and followed, provided reasonable assurance that the office is performing and reporting performance audit engagements in conformity with applicable Government Auditing Standards for the period reviewed. Based on its professional judgment, the peer review team gives [the highest] rating of "pass" to the Hawai'i Office of the Auditor.**

The Office of the Auditor received the highest rating in 2019, as it had three years before in 2016.



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## Defamation in any other context

**THE DRAFT REPORT** contains a large number of what appear to be knowing misstatements. Those misstatements, in almost any other context, would probably constitute defamation.

Defamation in Hawai'i involves, among other things, "a false and defamatory statement concerning another." *Beamer v. Nishiki*, 68 Haw. 572, 670 P.2d 1264, 1271 (1983). A "communication is defamatory when it tends to harm the reputation of another as to lower him in the estimation of the community[.]" *Nakamoto v. Kawauchi*, 142 Hawai'i 259, 270, 418 P.3d 600, 612 (2018) (citation omitted). The standard for defaming a private person involves mere negligence. The standard for defaming a public figure is higher. The person making a defamatory statement regarding a public figure must make the statement knowing that it "was false or with reckless disregard of whether it was false." *New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964).

While the doctrine of legislative immunity may protect a legislator from legal liability for defamatory statements made in the course of legislative process, which likely includes the committee's legitimate activities, the more important point is not about legal liability, but about reliability. If this committee's draft report contains numerous statements that meet the standard for defaming a public figure – knowing falsity or reckless disregard for truth or falsity – then the draft report is not a reliable document.

There comes a time when it is necessary to speak truth to power. The chair has elected to use her power and position on an investigative committee to conduct an ugly political smear campaign against the one office in state government (other than the judiciary) deliberately created under the Hawai'i constitution to be free from unwarranted political interference. That independence from political pressures is required for the job. Auditors are part of the accountability profession. The Auditor and his staff have to be able to call things as they see them, even if that means stepping on the toes of those who lead agencies or those who are politically connected.

## A Note on the Limited Nature of the Committee's Powers

*The committee was created by House Resolution No. 164 and authorized by it to investigate two specific state agencies' compliance with two specific audits. The chair's attempt to misuse the committee to "audit the auditor" under the guise of House Resolution No. 164 was never authorized by the House of Representatives, is far outside the committee's delegated powers, and is therefore an illegal abuse of power.*

Government officials must act within the limits of their powers, not outside them. This principle applies to chairs and members of legislative investigative committees. Even they must act within the boundaries of the powers delegated to them by the broader Legislature,<sup>4</sup> in this case by the House of Representatives.

Investigative committees enjoy only the limited powers granted to them by the Legislature. When an investigative committee acts outside those powers, that is by definition an abuse of power. The single-body resolution creating and authorizing the committee includes a specific section devoted to the "scope of its investigatory authority," as required by Hawai'i law. HRS § 21-3(b). That scope is carefully and explicitly delineated, as required by the Hawai'i statute and by U.S. Supreme Court holdings.<sup>5</sup>

<sup>4</sup> *Watkins v. United States*, 345 U.S. 178, 206 (1957) ("investigating committees are restricted to the powers *delegated* to them" (emphasis added)); *id.* ("Plainly these committees are restricted to the missions *delegated* to them" (emphasis added)). As the statute governing investigative committees in Hawai'i states, its purpose is to enable such committees "to perform properly *the powers* and duties *vested in them*["] HRS § 21-1 (emphasis added). Elsewhere the same statute speaks of "the single house resolution ... from which it [the committee] derives its investigatory powers." HRS § 21-3(a).

<sup>5</sup> *United States v. Rumely*, 345 U.S. 41, 44 (1953) (noting that the legislative resolution authorizing an investigative committee "is the controlling charter of the committee's powers.") *Rumely*, 345 U.S. at 44 (noting that an investigating

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The resolution delegates only specific and limited powers to the committee – powers explicitly spelled out in its scope of authority section. The resolution’s “purpose ... of the investigating committee” and “scope of its investigative authority” sections mention only two state agencies.<sup>6</sup> The Office of the Auditor is not one of them. The resolution’s title mentions only two state agencies; neither of them is the Office of the Auditor.

The committee’s own name – “the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01” – testifies to its specific scope and limited powers.<sup>7</sup> As its name reveals, the committee is tasked with investigating the “compliance” of the two relevant agencies with the two specific audits. That is what House members who voted for the resolution understood its scope to be. Until the chair attempted to co-opt the committee to serve some other purpose *not* present in the resolution, that is what the committee itself understood its purpose, subject matter, and scope of authority to be.<sup>8</sup>

In the draft, the committee now calls itself “the House Investigative Committee Established under HR 164.” Any mention of its actual name – with its connotations of an investigation of the “compliance” of two specific agencies with the recommendations of two specific audits – has been airbrushed out of the report. In other words, remarkably, the committee’s real name appears nowhere in the report. And by rechristening itself, the committee or its chair can proceed with conveying the impression that it was empowered to investigate the Auditor and the Office of the Auditor all along.

Nevertheless, the House resolution creating the committee does not authorize “auditing the auditor.” Far from it. Here is what it says, in plain English. According to the resolution, the “purpose and duties of the investigating committee and the subject matter and scope of its investigative authority” are threefold. (1) To “follow up on the audits,” that is, the two specific audits, of two specific agencies, (2) “to examine the recommendations made in those audits,” and (3) “for purposes of

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committee’s “right to exact testimony and to call for production of documents must be found in this language.”)

<sup>6</sup> House Resolution No. 164, at 3, lines 21-23; *id.*, lines 25-35.

<sup>7</sup> The committee’s name appears on every one of the subpoenas the committee issued, every one of its hearing notices, and on the committee’s own website.

<sup>8</sup> The committee describes itself this way on its own website. “House Resolution No. 164 (House Resolution No. 164) established the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01. The Committee is tasked with following up on the audits which focused on the management and operations of the Department of Land and Natural Resources’ Special Land and Development Fund (Report No. 19-12) and Agribusiness Development Corporation (Report No. 21-01). The Committee will examine the recommendations made in those audits for the purposes of improving the operations and management of those state agencies, their funds, and any other matters.”

improving the operations and management of these state agencies, their funds, and any other matters.”<sup>9</sup>

No one, not even the committee, thinks the phrase “these state agencies” includes the Office of the Auditor.<sup>9</sup> No one, not even the committee, thinks the related language in the resolution “improving the operations” of the two specified agencies somehow empowers the committee to “improve the operations” of the Office of the Auditor. No one who knows law or grammar thinks the phrase “and any other matters,” tacked on at the end of clause (3), gives the committee the power to investigate whatever agency or topic it wants, for example, the Office of the Governor, the Office of Hawaiian Affairs, or Ringling Brothers’ circus.<sup>10</sup>

Clause (1) is limited to following up on the two specific audits of the two specific agencies. Clause (2) is limited to examining the actual recommendations contained in the two identified audits. Clause (3) plainly states that the purpose of the committee’s investigation is to improve the operations of DLNR and ADC, their funds, and other matters relating to these agencies’ compliance with the two audits.

The chair has attempted to rationalize away these limitations on the committee’s power in several ways. First, she claimed the committee had “inherent power”<sup>11</sup> to investigate the Auditor. That is flatly wrong as a matter of law. The Legislature has inherent powers. But the committee itself has only the powers delegated to it by the broader

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<sup>9</sup> That is not to say the committee or its chair did not try to obscure the point. On the face of each of its subpoenas, the committee has a “notice to witness” that accurately describes its purpose and scope of power under House Resolution No. 164 – with one very conspicuous omission. It says, “The Investigative Committee is authorized to follow up” on the two audits “and to examine the recommendations made in those audits, for purposes of improving the operations and management of state agencies, their funds, and any other matters.”

Notice that the limiting word “these” from the resolution’s actual phrase, “these state agencies,” is conspicuously omitted in the “notice to witness” on the committee’s subpoenas. In one stroke, the committee transformed its authorized purpose from “improving the operations and management of these state agencies,” namely two, to a general purpose of improving the operations and management of an indeterminate number of state agencies. It’s possible the omission of that key limiting word was an innocent mistake. It seems more likely that it was not.

<sup>10</sup> Delegation of legislative authority cannot be unlimited, that is, “for any purpose.” Even at its outermost legal limits, delegation of legislative power presupposes “an intelligible principle” of delegation, according to numerous and longstanding U.S. Supreme Court decisions. It is absurd to pretend that this tiny tail of “and any other matters” wags the whole dog of the resolution. And even if, against all reason, it did, the phrase “and any other matters” does not remotely qualify as an “intelligible principle” of delegated powers. It would be an illegal and improper delegation of legislative power.

<sup>11</sup> <https://www.youtube.com/watch?v=5S3UyJdECkM>. Timestamp 00:12:25 of the October 21, 2021 hearing. (Chair Belatti: “we are a legislative committee and an inherent power and fundamental right of this body is to investigate ...”)

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House. Simply put, the committee's delegated powers are specific and limited by the authorizing resolution, and they do not include a roving commission to wholesale investigate the operations and management of other state agencies.

Second, the draft report now claims the committee is only following unspecified "congressional practice" and other states in going beyond the scope of its authorizing resolution. This is an odd claim. Hawai'i legislators, in particular, should be very clear about the fact that they must follow Hawai'i laws and U.S. Supreme Court precedents governing the delegation of legislative power. That is not optional. Claiming to possess unspecified and non-delegated powers to follow vague and unspecified "practices" of Congress and other states just does not cut it.

Third, the chair appears to claim that she "specifically drafted" House Resolution No. 164 "to allow the committee to delve into other matters[.]" That may have been her private intent, but if she is referring to "other matters" outside the scope of the two specified agencies complying with the two specified audits, that is not the legal effect of her drafting.

Under standard canons of statutory construction, the phrase "and any other matters," tacked on at the end of very specific scoping language in the resolution, must be interpreted to modify only the specific language preceding the phrase in the resolution and not as some kind of unlimited grant of plenary investigative authority. Scalia & Garner, *Reading Law: The Interpretation of Legal Texts*, 199 (the canon *eiusdem generis* "applies when a drafter has tacked on a catchall phrase at the end of an enumeration of specifics[.]"); *id.* (the phrase *eiusdem generis* is Latin for "of the same kind"); *id.* (characterizing the canon as, "Where general words follow an enumeration of two or more specific things, they apply only to persons or things of the same general kind or class specifically mentioned."). See also *Priceline.com, Inc. v. Dir. Taxation (In re Priceline)*, 144 Hawai'i 72, 436 P.3d 1155, 1173 (2019) ("The doctrine of *eiusdem generis* states that where general words follow specific words in a statute, those general words are construed to embrace *only* objects similar in nature to those objects enumerated by the preceding specific words. Courts employing the doctrine identify the commonality shared by the enumerated examples and use this commonality to limit the reach of the general term." (citations and quotation marks omitted)(emphasis added)).

The committee interprets the phrase "and any other matters" as though it were magically unmoored from the specific words that precede it. In effect, the committee pretends the phrase has no context, and thereby

creates the impression the committee has been delegated an unlimited power to investigate from the Legislature. Under the standard principles of legal interpretation, however, the phrase “and any other matters” applies only to the purpose of “improving the operations and management of these state agencies [DLNR and ADC],”<sup>12</sup> and therefore applies at its widest only to those two specific state agencies.

Fourth, the chair has claimed that the committee is merely “following up” on the recommendations in the two audits. That claim is belied by the fact that, for example, the chair attempted to go quite outside the boundaries of the two agencies’ compliance with the respective audit, to throw Honolulu Authority for Rapid Transportation (HART) and various other wide-ranging and unauthorized investigations into the mix. Quite obviously, that is not a “follow-up” to the recommendations in the two audit reports concerning the two agencies. It has nothing to do with those agencies’ compliance with the two audits specified in the resolution. It is, instead, a transparent pretext for pursuing political machinations in the service of a political agenda to force the Auditor from office prior to the expiration of his term.

“We are a government of laws and not of men,” as John Adams famously said. We all know what happens when government officials ignore the boundaries of their legal and legitimate power; it is sufficient to mention Senator Joseph McCarthy’s rogue investigative committee in this regard. In other words, for government officials to act outside their legal authority is no minor matter. That is why the law takes officials acting without proper legal authorization very seriously.

To be clear, we are not saying *the Legislature* lacks power to investigate what it wants, when it wants, with very few (mostly constitutional) limitations. We are saying *this committee* lacks the power to investigate what it wants, when it wants, under the pretext of “following the evidence” to a pre-ordained conclusion. It lacks that power because that power was never delegated to the committee from the broader House. No House member voted for an investigative committee with a roving commission. They voted for a very specific and limited delegation of investigative authority to the committee.

The Legislature could have granted broad and wide powers in the authorizing resolution had the Legislature wanted to do so. We have no quarrel with the Legislature’s ability to do that. But that is not what the Legislature did in House Resolution No. 164. Again, if the Legislature wanted Hawai’i law to follow congressional practices or those of other states, it has the power to change Hawai’i law to do so. But it

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<sup>12</sup> House Resolution No. 164, p. 3, lines 33-35.

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did not, and it has not, and the committee's attempts to simply pretend otherwise, and to act on that pretense, represent an abuse of power.<sup>13</sup>

In addition, there are serious ethical issues raised when a committee or chair consistently oversteps the boundaries of their legitimate powers. When public officers act beyond their lawful authority, it represents a serious ethical lapse. As the Hawai'i constitution emphasizes, "The people of Hawai'i believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government." Haw. Const. art. XIV. What are the people of Hawai'i to make of committee members or chairs who are apparently unconcerned with willfully operating well beyond their legitimate and authorized powers? Shouldn't everyone be concerned about this kind of thing?

### **Nothing to Hide; but Plenty to Protect**

As you read the committee's report, and this response, one might wonder why the Auditor did not simply turn over all documents and answer all questions sought by the committee. Why resist if you don't have anything to hide?

As the Auditor has said repeatedly, we have nothing to hide. Our work, in stark contrast to that of this committee, is complete, accurate, supported, and contains meaningful findings and recommendations. But our office is established in the Hawai'i State Constitution; it was designed by the framers of that constitution to function free from undue influence by politicians and politics.

Why not just give the committee our workpapers and other confidential information? The answer to that question has two parts.

First, the committee was formed to investigate compliance with recommendations made in two audit reports regarding two agencies –ADC and DLNR's Special Land and Development Fund. The

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<sup>13</sup> The importance of observing the boundaries set by the legislature in delegating power to investigative committees has been underscored by a federal court. The case involved a legislative subpoena issued from a state investigative committee that was operating outside the boundaries of its authorizing resolution. *Thompson v. Ramirez*, 597 F.Supp. 730, 735 (D. P.R. 1984). The case raised an important legal question. "If the challenged subpoenas were not issued pursuant to an authorized legislative resolution, do the legislators enjoy immunity under" 42 U.S.C. § 1983 (the federal statute that allows government officials to be sued for constitutional violations)? The court answered that the legislators were stripped of legislative immunity under those circumstances. *Id.* ("[W]e now find that the legislators do not enjoy absolute immunity when the Legislative Rules and Resolutions are not strictly followed in taking action.") The relevant point here is that when legislators violate authorizing resolutions in the context of investigative committees, it is not a minor legal inconvenience. To the contrary, under some circumstances, it may even put legislators' legislative immunity from suit at risk.

## A Year-Long Attack on Good Government

**THE UNSUPPORTED AND UNJUSTIFIED ATTACKS** on the Office of the Auditor are even more egregious – and the deceptive “gut and replace” of the resolution that created this committee to look at the findings and recommendations made in the reports on the Special Land and Development Fund and the Agribusiness Development Corporation are even more intolerable – when seen as part of a year-long, relentless attack on the office and on good government oversight.

*The Working Group and legislation introduced in 2021 designed to gut the Office of the Auditor and impose undue interference on independence.*

① **January 14, 2021**  
Speaker Scott Saiki issues a memorandum to all House members announcing his unilateral creation of a “State Auditor Working Group.” The Working Group is led by appointed chair Edwin Young. The Working Group initiated interviews of individuals outside of the Office of the Auditor before it contacted the State Auditor or this office.

② **January 20, 2021**  
Speaker Saiki introduces House Bill No. 1, which slashes the office’s personnel and operational budget by 52.6 percent. The bill would not only eliminate positions and threaten the viability of the office, it eliminates funding for the financial statement audits of 22 state departments and programs as well as the State of Hawai’i Annual Comprehensive Financial Report, all of which are paid through the Audit Revolving Fund that Speaker Saiki removes from the Office of the Auditor’s budget. House Bill No. 1 also excludes funding for special studies by the Auditor, and removes boilerplate language that allows the Auditor to expend funds appropriated to the office.

③ **January 22, 2021**  
Speaker Saiki and Chair Belatti co-introduce House Bill No. 354, which allows the Legislature to determine the Auditor’s salary, currently set by statute and is the same as the salaries of

the heads of the three other legislative service agencies. However, House Bill 354 does not propose altering the salary structures of the three other legislative service agency heads.

④ **January 27, 2021**  
Chair Belatti introduces House Bill No. 1341, which creates another level of bureaucracy to oversee the activities of the Office of the Auditor and other “good government” offices.

⑤ **January 29, 2021**  
Working Group Chair Edwin Young emails the State Auditor stating that the Working Group will be performing an “independent and objective” assessment of office operations. Most, if not all, of the requested documents and questions seem unrelated to and well outside the Working Group’s purpose, as defined by the Speaker. Among the documents that Young requests are confidential personnel files, including private contact information for former employees; audit work papers confidential pursuant to section 23-9.5, HRS; litigation files, including “lawyer files”; and information about “media battles,” staff evaluations, and staff turnover.

⑥ **February 5, 2021**  
An email from Rona Suzuki, Speaker Saiki’s senior advisor, to Working Group members is mistakenly sent to the Office of the Auditor. In the email, Suzuki, a non-member of the Working Group, updates the group members on research she has done on its behalf. Among the recipients of the email is the former Administrative Deputy Auditor, Ronald Shiigi, who will later testify before the House Investigative Committee that, in his opinion, Auditor Kondo omitted important information from an audit. Shiigi, a non-member of the Working Group and a current Executive Branch Interim Division Head, provides the Working Group private contact information for former Office of the Auditor employees.

④ **April 1, 2021**

The Working Group releases its report, which contains many personal attacks against the Auditor. The report relies heavily on accusations and lacks factual support. The Working Group never took the Auditor up on multiple invitations to meet and never responded to the Auditor's questions, including questions about its authority to access personnel records and the office's confidential work papers. Instead, the Working Group contented itself with interviewing a few former employees. They did not identify their sources and did not give the Office of the Auditor an opportunity to respond, which the chair had promised. They did not even ask to interview the Auditor or any current staff.

"I am going to let it speak for itself," she said. "I believe anyone who takes the time to read it will see that was not predetermined, and neither is the next step we will take." – *Della Au Belatti*, House Majority Leader, Civil Beat, April 1, 2021.

Belatti is later named Chair of the House Investigative Committee to Investigate Compliance with Audits Nos. 19-12 and 21-01.

④ **April 29, 2021**

On the last day of session, Majority Leader Belatti offers, and the House adopts, House Resolution No. 164, which establishes the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01.

④ **September 29, 2021**

At a procedural hearing of the House Investigative Committee, early in its investigation, Chair Belatti claims that there may be "something amiss in the scope of these audits" and is concerned that some important issues may have been omitted from scrutiny of the Auditor. "We would not be doing our job as legislators if we turned a blind eye to the problems being raised in this Committee," she says. The Chair opines that the committee's follow up of the audit recommendations could

have been disposed more quickly if the Office of the Auditor had followed Yellow Book standards. She announces that the committee will examine if, in fact, the Office of the Auditor followed Yellow Book standards at the various stages of its audit process. "Members, we are going to be asking these questions and doing our due diligence. That is what we have been tasked to do by House Resolution 164," she says.

④ **October 20, 2021**

Before the committee is to hear the testimony of Ronald Shiigi, former Administrative Deputy Auditor for the Office of the Auditor, Chair Belatti states that the committee believes omissions in evidence by the Auditor warrant further investigation since the issues "concern policy making and at minimum auditing irregularities that should be explained, and at worst cases of abuse and misuse of power, mismanagement, malfeasance and/or fraud that need to be audited pursuant to Yellow Book standards." Chair Belatti then announces that the next two weeks of testimony will be dedicated to better understanding the circumstances surrounding the omissions, actions or inactions of the Auditor, as well as the policies, procedures, management oversight and disposition of public lands by DLNR and ADC.

④ **December 30, 2021**

The House Investigative Committee releases its draft report to the witnesses it subpoenaed during its investigation. The draft contained nearly two dozen incomplete pages, many of them featuring recommendations and commentary that are half-formed, accompanied by editorial notes or placeholder text. A couple of recommendations featured options from which committee members could choose from. Several recommendations and the report's "closing conclusion" were missing altogether. One of the recommendations is: "The Committee recommends further investigation into the Office of the Auditor by the House of Representatives, a future investigative committee, or an independent third party that can conduct a thorough performance audit of the Office of the Auditor."



resolution that was offered by the chair contained nothing about investigating the Office of the Auditor. It became evident early on that the committee was improperly exceeding its authority by looking into matters unrelated to ADC and DLNR.

Second, this office has legal and ethical obligations to protect its independence and the confidentiality of its workpapers. When the committee subpoenaed our confidential workpapers, the Office of the Auditor had to go to court to protect them. A Circuit Court judge agreed with us, followed the law, and quashed the committee's subpoena seeking this information. The draft report attempts to downplay this, of course. It is not credible to say that the Auditor refused to cooperate. A simple look at the record shows that the Auditor gave almost eight hours of testimony going through the findings made in the audit reports, the process used by our office, and answering the committee's questions. But when the committee made it clear, and then later named the Office of the Auditor as a subject of investigation, we had to protect this office's independence. It is not a matter of protecting one person's job or position. It is the critical role of our office and all good government agencies that must be protected.

## Another "Gut and Replace"

ON THE LAST DAY of the most recent legislative session, the House of Representatives passed House Resolution No. 164. The resolution's title mentions only two state agencies, neither of them the Office of the Auditor. Likewise, the resolution's "purpose ... of the investigating committee" and "scope of investigative authority" sections mention only two state agencies. The Office of the Auditor is not one of them. As the committee's own name acknowledges, it is a "Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01."

The Office of the Auditor authored the two audit reports named in the committee's title, and the Auditor can and has supplied helpful information to the committee concerning them. But the Office of the Auditor cannot, by any logic, be in or out of compliance with its own audits of other agencies.

That means the Office of the Auditor itself cannot be a proper subject of, or target of, a committee authorized by the House only to investigate two other agencies' compliance with two specific audits. Yet, from the outset, it was clear that one of the committee's main objectives was to investigate the Office of the Auditor. This "gut and replace" should not be tolerated.

On Thursday, October 28, 2021, all pretext was abandoned when the chair confirmed that the testimony that day of Randal Lee would concern "the management and function of the Office of the Auditor." The chair was now committed, she said during the hearing, "to stay focused on the proper management and operation of all three agencies." That is, not only DLNR and ADC – the agencies whose compliance with the Auditor's audits the committee was authorized to investigate, as reflected in the committee's very name – but also "the management and function of the Office of the Auditor." According to the chair, "we are going to go down this path."

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We have noted the importance of free and open communication with employees and supervisors of the agencies we audit. Everyone should be concerned about the chilling effect when staff know that management may eventually hear their responses to our questions and the importance of providing a protected space.

Our working papers are confidential by or protected from disclosure by law. To protect the Office of the Auditor's independence and credibility, it was reasonable and necessary to seek clarification about the committee's authority, purpose and objective(s).

What follows is a detailed response to the many inaccuracies, half-truths, and innuendo contained in the draft report. As we note, the draft report given to us was not complete. There were many holes and incomplete sections. But we are compelled to make a record showing the false and unsupported allegations for what they are. They cannot stand unopposed.

An official report issued by a legislative committee should consist of more than a patchwork of unsupported statements, fact-less yet strangely pre-fabricated recommendations, periodic accusations of impropriety, and—in Representative Kobayashi's words—innuendo apparently designed for the very purpose of casting the Office of the Auditor in a negative light. That goes without saying. Yet the draft report is not only tantamount to a failure to conduct a professional, or fair, or impartial proceeding with regard to the Auditor. It is also at least vaguely suspicious. If, as Representative Kobayashi noted, "much of what is said in this report is incorrect and improper," that was not caused by a mere failure of due diligence on the part of the committee or its staff.

Indeed, the chair made a point of repeating that she and the committee had poured over tens of thousands of pages of subpoenaed documents. One would expect such a widely cast net to yield more fish. But, strangely, it did not. The periodic accusations of impropriety, sprinkled throughout the draft, are supported by no documentary evidence. To be sure, the voluminous testimony has been scoured for tidbits that are then framed in the light least favorable to the Auditor or the Office of the Auditor. For example, some of the testimony regarding the Auditor himself was so extreme, so inaccurate, so emotive, and so untethered to fact that it can be fairly categorized as defamatory, and some of that found its way into the report.

In addition, the committee has conducted much of its "fact finding" in private meetings which we assume will remain confidential.

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## Undue Influence Threats

**GOVERNMENT AUDITING STANDARDS** issued by the U.S. Government Accountability Office require that we maintain our objectivity and independence – both of mind and appearance – including independence from undue political or other external influences or pressures that may affect an auditor's ability to make objective judgments.

We cannot disregard or otherwise compromise the Government Auditing Standards that are the foundation of our performance audits. We must preserve auditor independence and objectivity. Auditors are independent and objective when they perform their work with an attitude that is impartial, fact-based, nonpartisan, and nonideological with regard to audited entities and users of the audit reports. Objectivity includes independence of mind and appearance, maintaining an attitude of impartiality, having intellectual honesty, and being free of conflicts of interest. An auditor's credibility is paramount, and credibility emanates from independence and objectivity. Independence impairments, such as undue influence threats, affect auditors' objectivity. Therefore, it is critical that we eliminate any actual or perceived undue influence threats to our independence, or reduce them to an acceptable level.

Actions by the committee pose an undue influence threat to the Auditor's and the Office of the Auditor's ability to make objective judgments in contravention of Government Auditing Standards.

Paragraph 3.42 of the 2018 revision of Government Auditing Standards provides examples of circumstances that create undue influence threats for an auditor or audit organization:

1. External interference or influence that could improperly limit or modify the scope of an engagement or threaten to do so, including exerting pressure to inappropriately reduce the extent of work performed in order to reduce costs or fees.
2. External interference with the selection or application of engagement procedures or in the selection of transactions to be examined.
3. Unreasonable restrictions on the time allowed to complete an engagement or issue the report.
4. External interference over assignment, appointment, compensation, and promotion.
5. Restrictions on funds or other resources provided to the audit organization that adversely affect the audit organization's ability to carry out its responsibilities.
6. Authority to overrule or to inappropriately influence the auditors' judgment as to the appropriate content of the report.
7. Threat of replacing the auditor or the audit organization based on a disagreement with the contents of an audit report, the auditors' conclusions, or the application of an accounting principle or other criteria.
8. Influences that jeopardize the auditors' continued employment for reasons other than incompetence, misconduct, or the audited entity's need for GAGAS [generally accepted government auditing standards, i.e., the Yellow Book] engagements.

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## One Side Does Not Fit All

**AS WE STATED** in our closing statement, an investigative committee is a kind of "adversarial proceeding," much like a trial. Like a trial, the committee brings the awesome power of the state to bear on individual witnesses, who must testify under oath. Like a trial, an investigative committee can compel attendance of witnesses, compel testimony, and compel the production of documents. Unlike a trial, however, only committee members can ask questions of witnesses. Unlike a trial, no one on the receiving end of committee process is entitled to confront his or her accusers. Unlike a trial, witnesses testify under a continuing threat of criminal contempt.

Also, unlike a trial – or any other adversarial proceeding for that matter – a committee investigation can be deliberately conducted in a one-sided manner, and the one-sided story is not subject to correction. Unlike a trial, in a committee investigation, the other side does not have the power to compel witnesses to appear and to ask questions of witnesses. Unlike a trial, there are not even two sides to begin with – a prosecutor and a defendant. There is only one side – the committee's side – and only the committee is able to present witnesses to support its narrative.

In a trial, one side can ferret out inconsistencies or omissions in the other side's telling of the story through cross-examination. But an investigative committee does not allow questions by anyone not on the committee, and it need not attempt to balance the committee's perspective with contrary perspectives and contrary questions. It need not tell the whole story. In an investigative committee, unlike a trial, testimony can be choreographed to tell only one side of the story. In an investigative committee hearing and report, the committee can write its own script in advance, including its own pre-determined outcome, if it so chooses.

## Fill in the Blanks

In her December 30, 2021, letter to House Investigative Committee subpoenaed witnesses announcing the release of draft report, Chair Belatti explained that the attached document was a "reflection of its findings and recommendations...." While the draft report is a reflection of something, it isn't a reflection of the committee's report's findings and recommendations. The draft contained nearly two dozen incomplete pages, many of them featuring recommendations and commentary that are half-formed, accompanied by editorial notes or placeholder text. A couple of recommendations featured options from which committee members could choose from. Several recommendations and the report's "closing conclusion" were missing altogether.

In her letter, Belatti explained that if subpoenaed witnesses wished to respond to the draft, they would have to submit those responses to her office in 14 days. She did not acknowledge that the draft report is unfinished or explain how witnesses could respond to missing or half-formed recommendations and commentary. However, Belatti did note that the "committee reserves the right to make changes and additions before final submittal of its report to the House of Representatives pursuant to House Resolution No. 164, Regular Session 2021."

Hopefully, sometime before then, the investigative committee will have filled in the blanks.

The following are a sampling of the draft report's missing items:



# APPENDICES

Neither, nor?

Missing commentary for recommendation about providing complete information. Ironic?

Missing conclusion response?

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## II. Response to Draft Report Chapter 4 – “Office of the Auditor”

### 1. “Auditing Policies and Practices of the Office of the Auditor”

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#### Updating the Office of the Auditor's Manual of Guides and Requiring Regular Training to Maintain Best Practices Consistent with Government Auditing Standards



#### The Facts

As there was no commentary included in the draft report, it is difficult to respond in any detail. However, we have been working on an update to the Manual of Guides to include, among other things, the updates to the Government Auditing Standards promulgated by the U.S. Comptroller General, also known as the Yellow Book, and do already undergo regular training, at least 80 hours every two years, as required by Yellow Book standards. We have been peer reviewed on our auditing practices, including staff qualifications and training, and found in compliance. The implication that we are somehow deficient in our auditing processes, qualifications, and training is unfair and unsupported. It simply is untrue, as is the suggestion that any of our employees are unfamiliar with the Government Auditing Standards. As we noted, professional auditors from other states have confirmed our staff's competence and compliance with Yellow Book standards.

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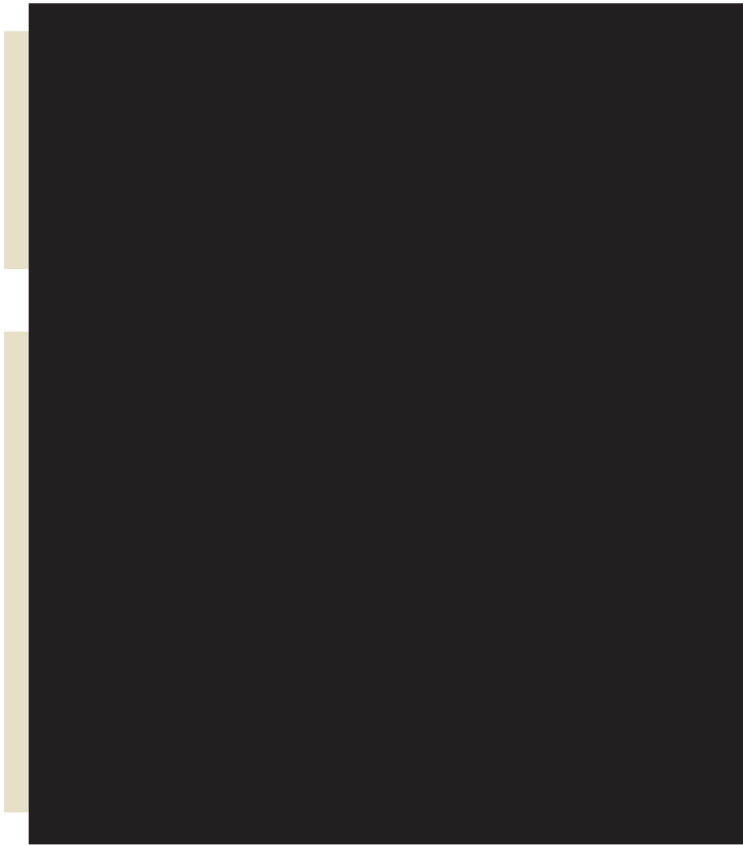
Furthermore, in 2017 and 2019, the Office of the Auditor arranged for training from the U.S. Government Accountability Office specific to Government Auditing Standards (Yellow Book) and internal control standards for the federal government (Green Book). In 2017 and 2018, the Office of the Auditor arranged for multi-day training on performance auditing from the then-Chair of the U.S. Comptroller General's Advisory Council on Government Auditing Standards.



Office of the Auditor's Response to Draft Report of the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01

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## Draft Audit Report Requirements



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## The Facts

The committee's citation to the 2011 Yellow Book is misleading. There is no requirement that recommendations be shared with an agency in a draft report. More importantly, the findings, specifically, the causes of the findings, are what the agency needs to address and where the agency should focus its review of the draft report. The recommendations are simply our suggestions as to how to address those causes. We believe our recommendations are meaningful and achievable means for the agency to improve its operations going forward. However, our recommendations to address the findings are not the only means. Agencies may have different ideas as how to better address those findings.

We do follow up on the status of implementation of our recommendations but have no enforcement power. From 2015-2019, 87 percent of our recommendations were at least partially implemented. But when an agency disagrees or feels a recommendation is no longer applicable, it has an opportunity to say so when reporting implementation status. Any implication that our office is improperly "sandbagging" auditees or violating applicable standards is unfair and unsupported. The Auditor in no way "downplayed" the importance of audit recommendations.

As for the timeframe for responding to our draft reports, as the committee notes, we have much work to do and much of it is time sensitive. We try to give auditees sufficient time to respond to our drafts, and if more time is needed, we always consider those requests and have been very accommodating on giving more time. Any implication that our office puts undue time pressure on auditees is unfair and unsupported.

It is also misleading to suggest that ADC staff wanted to involve the ADC board but were unable to because of the timing of its response. The ADC board declined an invitation to discuss the audit process at the beginning of the audit, and staff did not indicate any intent to include the ADC board in its response. Moreover, we have offered on numerous occasions, including directly to the board and through ADC staff, an individual ADC board member, and Representative Amy Perruso, to participate in a meeting with the board to discuss the audit findings. We have never received any response to those offers.

## Timeliness of Completion of Audits



### The Issue

In accordance with Act 28 (SLH 2019), the Office of the Auditor contracted with Accuity LLP, a public accounting firm, to audit ADC's financial records. The audit, which was initiated in July 2019, was scheduled to be completed by mid-December 2019. It has yet to be completed.

### The Facts

The committee's recommendation is ill-informed, based on the false assumption that the Office of the Auditor and/or Accuity are holding up the financial audit. It is impossible to ascertain the reasoning behind the recommendation since in place of its "commentary," drafters inserted placeholder text promising future discussion.

**However, if the drafters of this recommendation had read Report No. 21-01,** they would have learned Accuity suspended its audit after it determined that ADC's financial records were not in auditable condition. Since ADC's staff did not have the capability to get its records into auditable condition, it hired another public accounting firm, KMH LLP, to assist with the collection and preparation of the financial records, many of which needed to be recreated years after the fact. In Fall 2020, KMH informed the Office of the Auditor and Accuity that it believed ADC's financial records were in auditable condition and Accuity restarted its efforts. At the time, Accuity believed that it would be able to publish a financial audit report in January 2021.

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**If the drafters had followed up with Accuity,** they would have learned that Accuity found numerous exceptions (events that deviate from expectations) and required ADC management to resolve those exceptions and conduct a review for any additional errors that would require further adjustments. The investigative committee was aware that as of September 2021, ADC – not the Office of the Auditor or Accuity – was still working on addressing the various issues raised.

During its September 21, 2021, hearing, Representative Linda Ichiyama asked ADC officials for an update on the completion of the financial audit. ADC’s Senior Executive Assistant responded that management was trying to address Accuity’s concerns while balancing the needs of its daily work schedule along with the recent demands of the House Investigative Committee. She said that they were “really very close.”

**If the drafters had followed up with ADC,** they would have learned that the agency was not very close to completing its work. On September 28, 2021, a wildfire swept through a vacant property in the Whitmore Village area long known to be a haven for criminal activity. The fire exposed an illegal dumpsite and “chop shop” that had been home to hundreds of abandoned cars.

While the fire burned everything in the cars that was not made of metal, making it easier for the cars to be removed a month later, the intense heat melted car batteries, air conditioning systems and electronics that contain toxic materials. Accuity provided the relevant accounting guidance to ADC to perform an initial assessment as to whether such a liability and disclosure should be recorded on its financial statements as of June 30, 2019.

**If report drafters had followed up with ADC, Accuity, or the Office of the Auditor,** they would have learned that the agency recently procured an environmental consultant, which will assess the Whitmore Village area environmental issues and potential pollution remediation obligation and loss contingency. The Office of the Auditor continues to receive biweekly updates from Accuity.

## Compliance with Annual Reporting Requirements



### The Facts

Our office complies with HRS section 23-7.5; in fact, we do more than required under the statute. As we tried to explain to the committee, for the past few years, we have issued a separate report dedicated to reporting the status of implementation of our recommendations – not just the ones that have not been implemented, but all of them. The most recent report, Report No. 21-11, may be found at <https://files.hawaii.gov/auditor/Reports/2021/21-11.pdf>. We suspect that the committee may have been looking at our “Annual Report” instead, which is now a separate report.

Because we believe that follow-up is an effective way to monitor action on our recommendations in the absence of enforcement power, we affirmatively reach out to agencies to solicit status. We also provide the updated information to legislators so they, as appropriate, can compel action to address audit findings and “enforce” the recommendations. Our follow-up includes not only self-reports by the agencies, but generally, we do “active” follow-ups two to three years out, where we independently conduct a review of implementation. Not surprisingly, the result of our independent assessment differs from the status reported by the auditees. These active follow-ups are detailed in separate reports as well.

Finally, as to why certain recommendations might not be included in our reports, it is usually a matter of timing. We do reach out to check status a year after an audit, but there is a lag time on responses, and the annual report includes status of recommendations made in the previous five-year period. For example, our 2021 report includes status of recommendations made from 2015-2019. Status of recommendations made in the ADC audit, and other reports issued in 2020, will be included in our 2022 report on the status of implementation of our recommendations.



## 2. “Transparency of the Office of the Auditor”

### Access to the Office of the Auditor's Working Papers



Written Response / January 14, 2022 29



### The Facts

Any statement or implication that the Auditor is obstructionist or has something to hide is simply untrue. It is hard to fathom how the committee fails to recognize the importance of confidentiality and independence. The office routinely is asked to affirm the confidentiality provision with auditees and interviewees. Likely because the information (including audio recordings) are confidential working papers and not available to outsiders, interviewees are more open and frank in their answers and in the information they provide. They are assured that others, like their boss but also legislators, are not privy to their responses and comments. The committee's recommendation is much more concerned about finding "dirt" against the Auditor rather than protecting the Auditor's ability to do his job, to be the important resource to the Legislature that the office is created to be.

The "commentary" contained in the draft report relating to these recommendations should alarm anyone that reads it, at least anyone who cares at all about good government and independent oversight. In its zeal to continue its attack on the Auditor, the commentary further shows the committee's failure to understand the appropriate role of agencies like the Office of the Auditor, nor the respective roles of our Legislature and the Office of the Auditor under the Hawai'i Constitution. The characterization of the Auditor as "uncooperative" is outrageous and unsupported.

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The Auditor spent about eight hours testifying and fielding questions over three hearing dates. The Auditor is obligated to protect confidential information, especially when the information sought was not even close to being within the scope of the committee's authorized inquiry.

The draft report also refers to the Legislature as the "client" of the Office of the Auditor. This is simply wrong. Both the committee and its supposed audit expert, Edwin Young, fail to grasp this. Our office is an independent agency, established by the Hawai'i Constitution to operate free from the very type of interference and undue influence perpetrated by this committee.

Likewise, the committee has referenced "best practices" that include a legislative audit committee, and analogized the Office of the Auditor to the Honolulu Office of the City Auditor, Kaua'i County Auditor, and other jurisdictions. These comparisons are again unfair and misleading. This office, unlike those offices, is established via Constitution to be independent from the legislative body.

It is our hope and intention that our reports will serve as guidance to the Legislature, and contrary to the picture the chair tries to paint, we do regularly consult with key legislators and subject matter chairs to clarify the issues that are most meaningful for review.

Regarding the specific "recommendations" made under the "transparency" umbrella, we further respond as follows:

The recommendation that section 23-9.5, HRS, be amended to require the Auditor to disclose information, evidence, and requested documents to investigative committees is, simply put, a bad idea. The committee should seriously reconsider making such a recommendation, and if such an amendment is ever proposed, our office will oppose it for many of the reasons we discuss above.

The committee's "confusion" as to the concept that disclosure of working papers would compromise the independence of the Office of the Auditor is itself confusing. As written, the 1996 statute's language is unambiguous. Even if it were ambiguous, the legislative history confirms that working papers are, and remain, confidential, as that is crucial to the audit function. As we have said, we have a legal and ethical obligation to maintain the confidentiality of records and information.



## Recorded Interviews



### The Facts

This recommendation is so vague as to be impossible to respond to in any specific manner. When the process under which our reports are completed, as evaluated by an independent peer reviewer, complies with Government Auditing Standards, we reiterate our reports should and do speak for themselves and there is no reason other than harassment and undue influence to allow review of the workpapers and processes that lead to the final report. Allowing the specter of this type of review would cripple the ability of this office and other watchdog agencies to do full and fair and independent work. The committee also obliquely and misleadingly refers to a "brave whistleblower" who brought a forged easement to the Auditor's attention. This line of inquiry was debunked during the hearings. The committee's concern over this issue is

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disingenuous and overblown, considering their only recommendation regarding the easement was to expunge the forged easement from the public record, something that DLNR testified it was already working on.

Moreover, the committee's suggestions that the Auditor's denial of the requests by ADC personnel for copies of the audio recordings of interviews under the Uniform Information Practices Act (Modified), Chapter 92F, HRS, was anything but appropriate only highlights the biased and uninformed nature of the committee's draft report. The law presumes documents maintained by government agencies are accessible by the public. But, the statute also includes certain limited exceptions to disclosure that allow an agency to deny access to documents. One of those exceptions allows an agency to protect documents that are confidential under law from public disclosure. And, for the reasons thoroughly explained above, the Legislature intended that the Auditor's working papers would be confidential and not subject to public disclosure.

## Witness Reluctance/Hesitancy



### The Facts

As for the recommendation itself, there is nothing to respond to. There is no proposed legislation, no specific action proposed. The commentary, however, presents a warped understanding of the ethics laws regarding disclosure of confidential information. The committee attempted to intimidate witnesses, especially current and former employees, by threatening attendance under subpoena, which carried with it the potential of criminal contempt for refusing to answer questions. This would potentially put our employees, who are just trying to do their jobs, in an impossible choice between answering questions seeking confidential information and not answering and being held in criminal contempt. The information is confidential by law, and disclosure is a potential ethics violation by law, and our employees needed to be aware of their rights and obligations for their protection, not the office's. Contractual provisions and a contractor's professional code of conduct also require confidentiality. To say or imply that the Auditor was attempting to intimidate or suppress information is wrong.

The State Ethics Code provisions relating to confidential information (sections S4-12 and S4-18(a), HRS) prohibit both current and former employees of the Office of the Auditor from disclosing information contained in confidential working papers and any other information that by law or practice is not available to the public and which the employee or former employee acquired in the course of the employee or former employee's official duties.

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**§ 84-12 Confidential information.** No legislator or employee shall disclose information which by law or practice is not available to the public and which the legislator or employee acquires in the course of the legislator's or employee's official duties, or use the information for the legislator's or employee's personal gain or for the benefit of anyone; provided that this section shall not preclude a person who serves as the designee or representative of an entity that is a member of a task force from disclosing information to the entity which the person acquires as the entity's designee or representative.

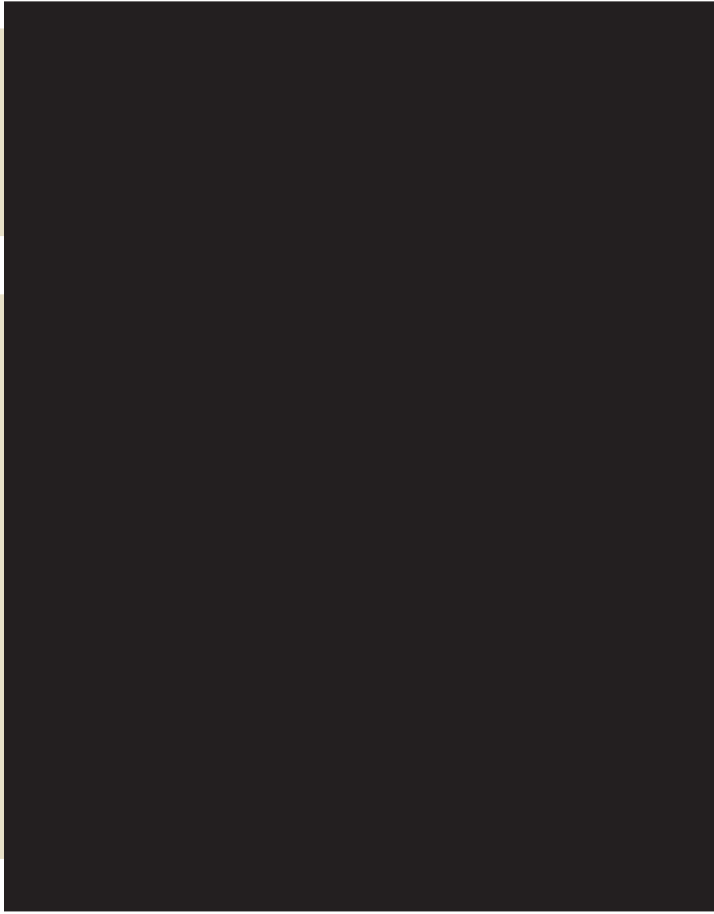
**§ 84-18 Restrictions on post employment.** (a) No former legislator or employee shall disclose any information that by law or practice is not available to the public and that the former legislator or employee acquired in the course of the former legislator's or employee's official duties or use the information for the former legislator's or employee's personal gain or the benefit of anyone.

Unlike the other post-employment provisions, there is no time limit involved in section 84-18(a), HRS.

Office of the Auditor's Response to Draft Report of the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01

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### 3. "Misleading or False Statements"





## The Facts

The statement or implication that concerns the Auditor's independence, integrity, credibility, or professional judgment is false, misleading, and defamatory. The "examples" cited in the draft report demonstrate, at minimum, both a reckless disregard for the facts and a lack of basic reading comprehension skills.

The committee should heed its own advice. The draft report is sensationalized, false, misleading. Words matter.

A "finding" should summarize the **evidence** gathered and developed during an audit in response to the objectives and should be the **factual** basis for conclusions and recommendations. There should be sufficient and appropriate evidence to ensure adequate understanding of the matters reported.

The alleged "false and misleading statements" cited in the draft report reflect either a failure to read our reports carefully enough, or deliberate distortion.

The committee cites our use of Act 149 in reference to the Kanoielehua Industrial Area (KIA) leases in our Special Land and Development Fund report as "unfair" and "misleading" because the leases were extended before the Act was passed. The committee misses the point. Our report used Act 149 to illustrate that the amount of improvements that Land Division was allowing to justify lease extensions was below the amount the Legislature subsequently set. We fail to see who this would be unfair and misleading to. Also, DLNR apparently understood the reference to Act 149. DLNR did not appear to think the reference was unfair or misleading. If DLNR had, DLNR would have so said in its response to the report – and it did not.

## A Question of Integrity

*Chair Belatti's odious attempt to question the integrity of our employees reveals much about her own.*

**TWO FORMER LAND DIVISION EMPLOYEES** have been employed by the Office of the Auditor since 2017. The two analysts have been exemplary employees, who have brought impressive skill sets to our staff and have made significant contributions to the audits they have worked on.

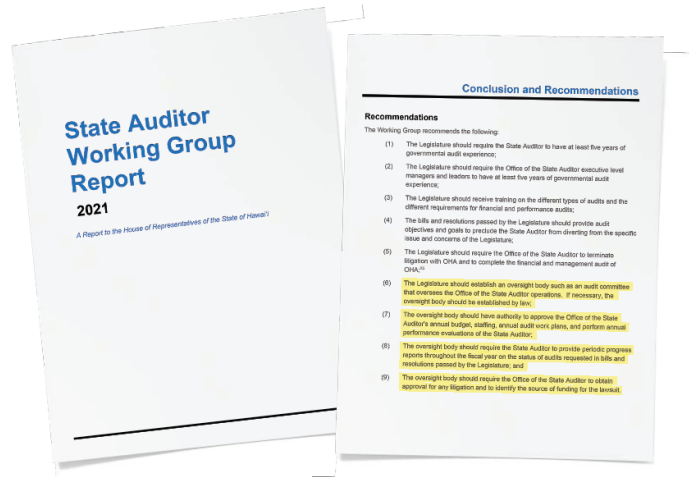
However, in an effort to bolster a false narrative about Auditor wrongdoing, the committee tars these valuable employees and their contributions with the broad brush of innuendo and insinuation. For example, the committee's draft report reads, "At least three out of seven people who filed complaints against Land Division Administrator Russell Tsuji were hired by or received an unsolicited job offer from the Office of the Auditor. The Committee finds these circumstances to be odd especially considering that the individuals recruited do not appear to have backgrounds in auditing."

Neither analyst received an unsolicited job offer from the Auditor, and neither was involved in the Land Division audit we completed in 2019. Both were "walled off" from that audit, assigned to another audit and instructed not to discuss any aspect of their former employment with the Land Division audit team, not that we needed to explain this necessity to them. Both the Auditor and the chair's own witness, former Administrative Deputy Auditor Ronald Shiigi, who was the DLNR audit supervisor, appeared before the committee and testified to these facts. Both assured the committee that there was no conflict of interest.

However, despite the testimony and in the absence of any evidence, the committee included these offensive accusations in its draft report. We hope that this is a drafting error. If not, Chair Belatti's odious attempt to question the integrity of our employees reveals much about her own.

## Chronicle of a Recommendation Foretold

If at first you don't succeed...The committee's investigation of the Office of the Auditor was a rerun of the working group's "audit of the Auditor," so it comes as no surprise that the recommendation for legislative action is also a repeat.



State Auditor Working Group Report 2021, released April 2021



The committee raises our alleged “conflating” of the public trust land doctrine, the public land trust law, and ceded land revenues in the DLNR audit. Anyone reading our report should see that we did not criticize DLNR on this point. We raised questions and suggested that DLNR seek guidance from the Legislature about the ceded land revenue issues. With respect to the public land trust, we noted Board of Land and Natural Resources (BLNR) members have a responsibility to manage those public lands in the best interest of the public and to generate revenue from those revenue generating lands.

Finally, the committee cited our reference to allegations made in a lawsuit in our report on ADC as “inappropriate, misleading, and irresponsible.” The committee’s commentary is misleading. Our report represented allegations as allegations and used documents provided by ADC to verify information – including the letter from attorney Michael Green, ADC board submittals, and correspondence between ADC and the plaintiff, ‘Ohana Best. The fact that ADC was being sued for not supplying water, declining to issue a lease instead of a license, and issues related to criminal trespassing was relevant to our findings. Reporting information contained in public documents is not inappropriate. We were careful to make clear that we were not agreeing with or supporting the plaintiff’s arguments. But the arguments about the inability to secure financing is exactly the point. While the committee wants local farmers and ADC to license its lands, the committee is either unconcerned or uninformed about the need to fund those operations and the inability of farmers to use the licenses to secure loans.

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#### 4. "Further Follow Up Needed"

##### Contract Cancellations and Potential Mismanagement of State Funds



##### The Facts

The committee dedicates *7 pages* of the draft report (of the 17 pages about the Office of the Auditor) to selective facts about the Office of the Auditor's contracts with consultants hired for the audit of HART. While the committee tries to insinuate that the Auditor mismanaged those contracts, the information recited by the committee – inaccurate, incomplete, and uninformed – only serves to again highlight the

committee's true and predetermined purpose – to manufacture fault with the Auditor and his work, irrespective of the truth and at any cost. The committee's suggestion that the Auditor's management of those contracts was anything but appropriate is irresponsible and inflammatory. More than only trying to smear the Auditor, Chair Belatti and possibly other members would expose the state to potential liability by intentionally bolstering of BKD's unfounded allegations against the Auditor and demands for additional payment for its uncompleted and substandard work.

The committee's recommendation that the Auditor be required to report on the expenditure of the funds appropriated for the purposes of the HART audit "and/or" to report on "the outcomes and costs" involved in its dispute with BKD is puzzling. Chair Belatti, who serves as the House Majority Leader, seems to be unaware that the Auditor regularly informed Senate and House leadership, including Speaker Saiki and House Committee on Finance Chair Sylvia Luke, about the status of the HART audit. House leadership is fully aware of the deficiencies with BKD's work uncovered by the Auditor, BKD's refusal to address the Auditor's concerns about those and other inaccuracies with its work, and the decision to terminate BKD's contract for default. In fact, leadership supported the Auditor's termination of BKD's contract.

#### **BKD, LLP**

The Office of the Auditor contracted with BKD to review the contracts and change orders relating to eight HART contractors and to assess HART's change order approval process. The contract amount, as amended, was \$725,000.

In November 2018, the Auditor discovered significant issues with BKD's work, including incomplete analyses and factual errors in its draft report. BKD refused to address the Auditor's concerns about the quality of its work and ignored the Auditor's multiple requests for a plan to provide reasonable assurance that its work was complete, accurate, and supported by appropriate evidence. Considering the magnitude and significance of the known errors in BKD's work, the Auditor determined that it would be unreasonable and imprudent for the Auditor to "assume" the rest of the report had been critically reviewed and was accurate and supported by sufficient and appropriate evidence; the Auditor will not issue a report without reasonable confidence the findings and statements therein are complete, accurate, and supported by sufficient and appropriate evidence. The Auditor rejected the incomplete and mistake-filled draft report and terminated BKD's contract for default, withholding the remaining \$284,244.46 under the contract.

It is puzzling that the committee's concern about the Auditor's actions with respect to BKD is based solely on statements BKD made to Hawai'i News Now alleging that the Auditor's concerns about its work

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product was a “smokescreen to undermine BKD’s credibility.”

Those statements, made while a mediator attempted to help resolve the dispute, are clearly biased and not what can remotely be called “evidence.” What possible motivation did the Auditor have to undermine BKD’s credibility?

Did the committee review BKD’s work and conclude that it was complete, accurate, and sufficiently supported? BKD’s work was simply subpar, which the committee easily could have confirmed; the Auditor’s decision to terminate BKD’s contract for default was not only justified but responsible, preventing the waste of public funds that would have resulted if the Auditor ignored BKD’s breach of its contractual duties, which the committee seems to suggest the Auditor should have done.<sup>14</sup>

Soon after terminating, for default, the contract relating to HART, the Auditor exercised the right to terminate, for convenience, contracts with BKD to perform the financial audits of the Department of Transportation, Airports Division and the Department of Transportation, Highways Division. The Auditor determined it would be irresponsible – and was not in the best interest of the state – to continue those contracts given BKD’s threats and demands against the Office of the Auditor. BKD was paid, in full, for the work it had performed up to the date of termination for convenience.

**Randal K.O. Lee and Daniel Hanagami**

The Office of the Auditor also contracted with Randal K.O. Lee and entered into an agreement with the Department of the Attorney General for the services of Chief Special Agent Daniel Hanagami to assist the office in its audit of HART. The committee characterizes Mr. Lee’s testimony about the circumstances surrounding the office’s termination of his contract as “troubling.” As Mr. Lee testified, once Speaker Saiki refused to allow the Office of the Auditor to use surplus funds that were about to lapse for the HART audit, the Auditor’s hand was forced – the Auditor had to use the funds that had been encumbered to pay for Mr. Lee and Mr. Hanagami’s services to retain another construction consultant to verify that the HART invoices approved for reimbursement by the Department of Accounting and General Services met the eligibility requirements for reimbursement under Act 1. The Office of the Auditor subsequently procured Baker Tilly Virchow Krause, LLP to review the Department of Accounting and General Services’ verification process. It is Speaker Saiki’s insistence that

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<sup>14</sup> The Department of the Attorney General represented the Office of the Auditor in response to BKD’s demand for payment of the remaining amount under the contract and in an unsuccessful mediation of the dispute. If BKD filed a complaint against the Office of the Auditor – which it has not – the Department of the Attorney General was prepared to file a counterclaim against BKD for breach of contract, seeking recovery of the entire amount paid to BKD.

the Office of the Auditor obtain his approval to use surplus funds for the HART audit and then his refusal to allow the Office of the Auditor to use those funds that were about to lapse that is "troubling."

The committee again tries to question the Auditor's "independence, objectivity, judgment, and adherence to laws and government auditing standards" based on Mr. Lee's responses to selective and leading questions. According to the committee, the Auditor did not include concerns about irregular change orders and potential bid rigging raised by Mr. Lee and Mr. Hanagami in the audit report or to "the proper authorities for investigation." That statement, however, is highly misleading and ignores evidence that directly addresses and rebuts the committee's suggestion that the Auditor "interfered" with their work. It also ignores the statement that the Office of the Auditor issued immediately after Mr. Lee's testimony.<sup>15</sup>

It is unclear if the committee hasn't read our report on HART or is intentionally mischaracterizing it. As plainly stated in the report, we did look at the matters that Mr. Lee identified to us and which he described to the committee. We reported that the City prematurely entered into contracts. Here are some of the headings and subheadings from the report: "The City prematurely entered into contracts under an artificial timeline and a fragile financial plan"; "Premature awarding of the initial \$483 million contract was driven by concerns that rising costs and loss of tax revenue would derail the Project"; "The City awarded nearly \$2 billion more in contracts in 2010 and 2011 despite not achieving milestones needed to begin construction activities"; "Low construction cost estimates, higher than anticipated inflation, and unanticipated issues also drive costs increases"; "Rising costs and revenues shortfall result in \$700 million to \$910 million budget gap." We also specifically reported about the utility relocation costs.

The Auditor also had multiple discussions with the FBI and the U.S. Attorney's office about HART, and immediately after the office released Mr. Hanagami from his contract, Mr. Hanagami went to work with the FBI and the U.S. Attorney's office in their criminal investigation of HART. Neither Mr. Lee nor Mr. Hanagami ever recommended or otherwise suggested any matter that they had uncovered should be referred to a law enforcement or other agency. Mr. Hanagami surely would have followed up and investigated the issues once he joined forces with the FBI and U.S. Attorney's office if Mr. Hanagami believed that there may be some misconduct or other issues with the change orders described by Mr. Lee.

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<sup>15</sup> The committee has purposely denied the Auditor any opportunity to explain and refute the inaccurate, misleading, and uninformed statements by the committee's cherry-picked witnesses. The Auditor has tried to correct those statements through letters to the committee as well as public statements.

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## A Line-by-Line Review

**BEFORE THE OFFICE OF THE AUDITOR** issues any report – even before a draft of the report is provided to an auditee – the report must pass the office's quality control process. That process, which we refer to as the "Independent Review," involves an auditor independent of the audit reviewing every sentence and verifying that, in the independent reviewer's professional judgment, each sentence is appropriately supported by sufficient evidence. The independent reviewer will often have questions about a report, including the evidentiary support for a finding, which the audit project team must address and resolve to the independent reviewer's satisfaction. That process, often takes a week or more, provides reasonable assurance that the statements in the report are based on evidence that is sufficient and appropriate, to support the audit's findings.

## Judgment Call

*Professional judgment requires auditors to make decisions about relevance.*

"Professional judgment assists auditors in determining the audit scope and methodology needed to address the audit objectives and in evaluating whether sufficient, appropriate evidence has been obtained to address the audit objectives." Paragraph 8.13, 2018 revision of Government Auditing Standards.

The committee suggests the Auditor may have purposely blocked Randal K.O. Lee and Chief Special Agent Daniel Hanagami from completing their review of change orders by terminating their contracts. The committee relies on a statement by BKD to Hawai'i News Now to suggest that the Auditor's motivation for terminating BKD's contract was similar. That accusation is reckless and untrue. The Auditor has *never* tried to stop or obstruct a consultant's otherwise relevant work.

In auditing, difficult decisions have to be made about whether particular lines of inquiry are relevant to audit objectives. Those decisions have to be made in a disinterested and ethical manner, informed by professional judgment. For example, after Speaker Saiki publicly disagreed with the Auditor's objection to HART management recording and transcribing employee interviews, a position he expressed without ever hearing the Auditor's concerns, Mr. Lee and Chief Special Agent Hanagami considered whether Speaker Saiki was trying to show support for certain contributors to his campaign and compiled a list of Speaker Saiki's political donors that have HART contracts or interest in the construction of the rail system.

The Auditor directed Mr. Lee and Chief Special Agent Hanagami to stop pursuing that line of inquiry – that is, Speaker Saiki and his possible motivation for seemingly undermining the office's audit of HART. The Office of the Auditor is not an all-purpose investigative office; we have neither the expertise nor the resources for that. And the Speaker's motivations regarding his public disagreement with the Auditor were not relevant to the audit's objectives. Again, Chief Special Agent Hanagami was free to follow-up once he joined forces with the FBI and U.S. Attorney's office.

## Further Investigation into or Performance Audit of the Office of the Auditor



### The Facts

The committee makes these recommendations despite admitting that it "was not able to fully investigate" the issues relating to these recommendations. It is false, misleading, and irresponsible for the committee to publish its conclusions on issues that, by its own admission, the committee did not have time to fully investigate.

The committee's allegations regarding the Auditor's independence and professionalism are wholly unsupported, reckless innuendo. The sole "evidence" cited for the slanderous accusations appears to be the biased, self-serving testimony of the chair of the State Auditor Working Group that, earlier in 2021, had issued a similarly ill-supported,

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questionable report critical of the Office of the Auditor. The “Further Investigation into or Performance Audit of the Office of the Auditor” section of the draft report repeats many of the same comments/criticisms of the working group.

The Office of the Auditor has been improperly and excessively under siege for more than a year. (See “A Year-Long Attack on Good Government” on page 14)

But, just as importantly, the Office of the Auditor does undergo regular, periodic independent reviews, by a third-party who actually does not have some politically motivated agenda and is truly unbiased and qualified.

The committee falsely implies that the Office of the Auditor is facing decertification or loss of accreditation, and that this would somehow damage the State’s bond rating. This is untrue. The untimely issuance of the State’s Annual Comprehensive Financial Report (ACFR) *could* jeopardize the State’s bond rating, not the committee’s opinion of the Auditor’s compliance with Government Auditing Standards. FY2021’s ACFR was issued on time, as were each of the prior ACFRs issued during the Auditor’s tenure. The financial auditor of the State’s ACFR must be peer reviewed, which they are.

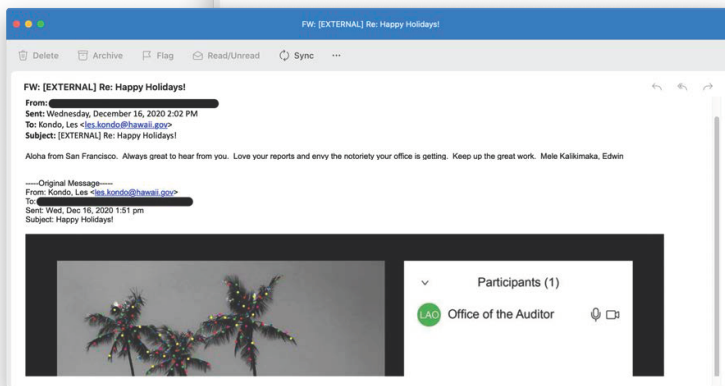
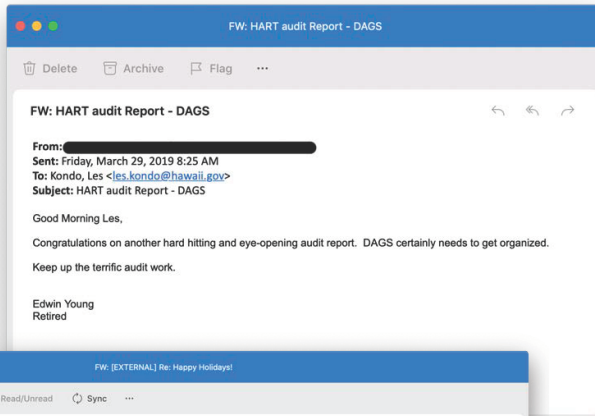
The committee repeatedly fails to understand or acknowledge the difference between financial and performance audits. We do not perform financial audits; we contract with independent public accounting firms to perform the financial audits. Per our triennial peer reviews, we are in compliance with Government Auditing Standards for performance audits (see “Been There, Done That” on page 7).



Office of the Auditor's Response to Draft Report of the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01

## From Envious to Outraged

Former City and County of Honolulu Auditor, Working Group Chair, and House Investigative Committee star witness was a fan of the Office of the Auditor's work until he wasn't.



"And Mr. Kondo and his behavior so far, if the newspaper articles are correct, is the poster child for bad auditing."

— Edwin Young  
from his October 28, 2021, testimony before  
the House Investigative Committee

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## Witnesses for the Persecution

THE "EVIDENCE" set forth by the committee in the draft report almost wholly consists of testimony from hand-picked witnesses.

- The draft report cites Edwin Young as an authority for various supposed violations of auditing standards, only some of which have any possible relation to the audits of DLNR and ADC. His testimony, which did not include any direct criticism of either audit report, was biased, unsupported, and in some cases dangerously misleading. Much of it appeared to be based on previous Working Group accusations against the Office of the Auditor, which were still unfounded. Rather than call an independent expert on auditing standards, the committee hand-picked Mr. Young, chair of House Speaker Scott Saiki's unilaterally created "State Auditor Working Group" that issued an unsupported, one-sided report critical of the Office of the Auditor, to continue the improper attack on our office.
- The draft report cites testimony by Randal Lee, who was briefly contracted to do some work on this office's audit of HART – not ADC or DLNR – as evidence that the Auditor omitted or suppressed work Mr. Lee did before terminating his contract with the office. Aside from the fact that Mr. Lee worked on a project that has nothing to do with this committee, Mr. Lee admittedly had no knowledge as to what happened with the issues – mainly regarding change orders – that he raised. If Mr. Lee or anyone else read our report, it is plain to see that we did discuss this in our HART audit reports to the extent appropriate.
- The draft report cites testimony from former Administrative Deputy Auditor Ronald Shiigi, who was supervisor on the DLNR audit, in a ludicrous attempt to show more "omissions" on the part of this office in the DLNR report. The matters that Mr. Shiigi discusses were dealt with appropriately. There was a forged document by a DLNR land agent that the draft report claims we should have included. As DLNR chair Suzanne Case acknowledged, this document had been known to DLNR and dealt with by DLNR before we did our audit. Mr. Shiigi also mentioned a non-profit status issue that even he was not clear on; this issue was not germane to our audit work.
- The draft report insinuates that our office was somehow guilty of some serious omission or some kind of breach of duty by not examining the Kaua'i lands held by ADC. This is, again, misleading and unsupported innuendo. Our report does discuss the Kaua'i lands, but the Kaua'i lands were not a focus of our work because, among many reasons, those lands are managed by outside entities other than ADC.

## 5. "Establishing Greater Collaboration with and Oversight of the Office of the Auditor"



### The Facts

Similar to the other efforts to improperly insert political influence into the operations of the Office of the Auditor, this should be rejected. The comparison to the City and County of Honolulu and County of Kaua'i is, once again, misleading. As we have repeatedly explained, our office is designed to be independent. This was set forth in the Constitution. Unlike other offices, we are not an arm of the Legislature, nor is the Legislature our client. This "recommendation" is another thinly veiled, improper effort to exert undue influence over the Office of the Auditor.

It is also misleading and disingenuous to suggest that there is not sufficient collaboration with legislators about the scope of audits.

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Throughout the legislative session, the Auditor and the Deputy Auditor request meetings with legislators about bills and resolutions that include an audit or other work directed to the Office of the Auditor. Often those bills and resolutions contain broad, undefined audits. For example, Act 28, Session Laws of Hawai'i 2019, directed the Auditor to "conduct a performance audit of the agribusiness development corporation." We simply do not have sufficient staff resources or time to audit every aspect of ADC's operations. We always ask legislators to identify the specific activities or areas of the agency's operations that they are interested in assessing. And, as we have explained to the committee over and over again, if directed to audit "the agribusiness development corporation," as Act 28 did, we will develop audit objectives, i.e., an audit that we have sufficient resources to complete, based on a risk-based assessment of the agency's key activities. Those objectives, however, may not include activities that certain legislators may be interested in better understanding.

As part of the initial audit planning phase, the Auditor does request meetings with the chairs of the Senate and House subject matter committees as well as with those legislators who strongly advocated for the bill. In most cases, the Auditor has met with those legislators during the legislative session to suggest revisions to the scope of the audit requested in bills and resolutions. In the case of the DLNR audit, the Auditor met numerous times during and after the legislative session with the then-chair of the House Committee on Land and his Senate counterpart. They noted for us that the Land Division's land leases and revocable permits were "contracts" as that term is used in Act 209, Session Laws of Hawai'i 2017. They also expressed questions about the use of state funds appropriated to DLNR to support the International Union for Conservation of Nature (IUCN) conference that would be held in Honolulu. While we agree that individual legislators should not dictate the scope of audits that are not otherwise specified in legislation passed by the Legislature, we do consider legislators' perspectives and concerns about the agency in our audit planning.

With regard to the ADC audit, we requested meetings with members of the Senate and House agriculture committees. The then-chair of the Senate Committee on Agriculture and three members of his committee jointly met with the Auditor and the project team to discuss their perspectives and concerns about ADC. None of the members of the House Committee on Agriculture responded to our request for a meeting, including Representatives Perruso and Okimoto.

### III. Response to Draft Report Chapter 2 – “Special Land and Development Fund”

Throughout this report, beginning with the first recommendation, the committee incorrectly labels our findings “criticism.” To be clear, we present **findings** that are objective, fact-based analyses based on substantive and relevant evidence. We are concerned that the committee’s dismissive language and tone could mislead readers into thinking that our real and significant findings are merely unsupported criticisms that can be disregarded.

It is both concerning and frustrating that the committee, in its attempt to find fault with the audit and the Auditor, undercuts our findings and, in several instances, seems to imply that we were holding DLNR to too rigid a standard (i.e., the law, fiduciary duties, legislative intent). However, perhaps most troubling are the committee’s recommendations themselves, which flow from “commentary” that in turn are supported by opinions, suggestions, and assumptions – not facts, not evidence. Because many of these recommendations involve changes in policy that could have wide-ranging and significant impacts on the agency and the public, we suggest that the committee consider the following facts before finalizing its report recommendations.

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## Fact Check: Ceded Land Revenues



### The Issue

The committee misunderstands the issue that Report No. 19-12 raised in respect to DLNR's ceded land revenues. Land Division identified selected ceded lands (the highest income producing ceded lands in its portfolio) and the BLNR authorized revenues from those lands to be kept in the Special Land Development Fund (SLDF) (after the 20 percent is transferred to OHA).

We questioned whether BLNR has the authority to decide to retain some of the revenues from ceded lands. Under the Admissions Act, revenues from ceded lands can be used for only 5 purposes: (1) support of public education; (2) betterment of the conditions of Native Hawaiians; (3) development of farm and home ownership; (4) public improvements; and (5) provision of lands for public use. DLNR's mission relates to only one of the 5 permitted uses of ceded land revenues, provisions of lands for public use. We suggested that the Legislature should determine the use or uses of the ceded land revenues; in other words, it is a policy determination that belongs to the Legislature. We suggest that the committee recommend such a legislative review.

## Fact Check: Sublease Rents



### The Issue

The issue goes back to Land Division having no strategic plan, not being prepared for the inevitable lease expiration dates, and having no alternative but to extend the leases. When executed 55 years earlier, the lands were unimproved and the lease rents were based on the appraised fair market rent of the *unimproved* lands. Today, those lands have tenant-constructed buildings and other improvements, as well as infrastructure like water and sewer service; under the terms of the leases, tenants must surrender the property along with those buildings and improvements at the end of the lease term.

If BLNR had allowed the leases to expire and issued new leases, the new lease rent would be based on the appraised fair market rent of the *improved* land, which Land Division advised BLNR would likely generate higher lease rents. For just the 16 leases in the KIA that BLNR approved 10 year lease extensions, DLNR lost annual revenue opportunities totaling over \$1.6 million, or \$16 million over the 10 years.

The example cited in Report 19-12 about 69 Railroad, LLC, a KIA lessee, was to illustrate the material difference between the lease rent based on the value of the unimproved land compared to the value of the land, as improved. 69 Railroad was collecting four times more rent from its tenants than it was paying to lease the state-owned land. BLNR nevertheless approved a 10-year extension of the land lease and attempted to add a portion of the sublease revenue to the annual lease rent. The tenant objected.

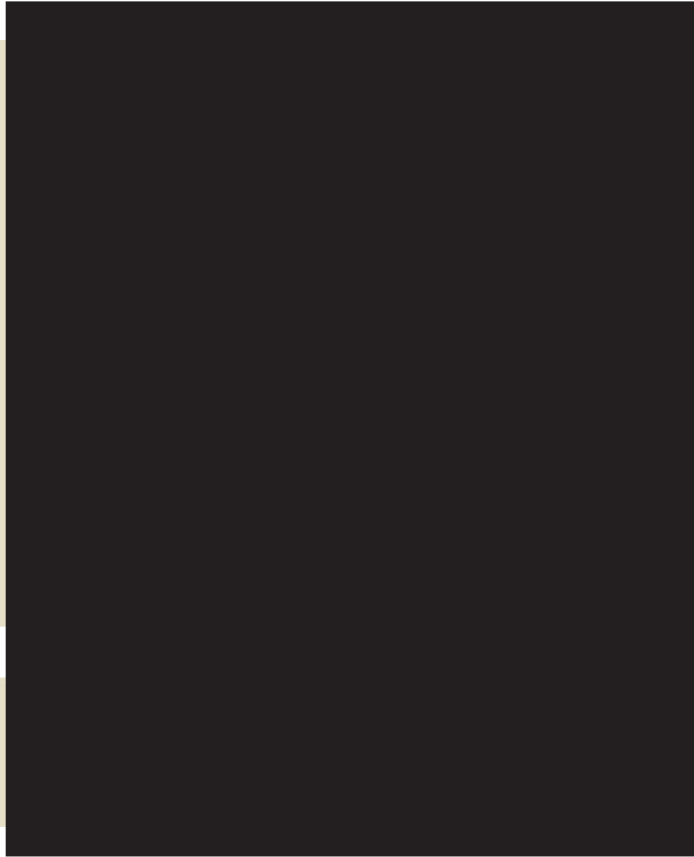
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Again, it is not the inability to share in the sublease revenue that should be the committee's concern. It should be BLNR's practice of extending leases whose rent is calculated on the fair market value of unimproved land when that land now includes substantial (and valuable) improvements. If the lease was allowed to expire, the fair market value of the land used to calculate the annual lease payments would be based on the land *including the improvements*.

The committee misunderstands the issue and is offering a solution to a problem that doesn't have to exist.



## Fact Check: Lease Extensions



### The Issue

Act 207 (SLH 2011) provided that the term of a commercial lease may be extended upon approval of the Land Board and to the extent necessary to qualify the lessee for loans or to facilitate the lessee's self-financing of "substantial improvements" to the property. The aggregate of the initial term and any extension granted shall not

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exceed 65 years. Pursuant to Act 207, lessees that were granted 10-year extensions were required to provide receipts and other documentation of improvements, or the lease extension would be cancelled.

#### The Facts

Of the 13 lease files we reviewed for documentation to support substantial improvements, only 4 contained all the receipts to verify that the lessee completed the required improvements. Some files only included proposals submitted by contractors. Others included receipts for only a portion of the improvement costs. In other words, BLNR requires minimal (if any) substantial improvements to justify extending leases. Some of the Land Division's KIA lease extensions would not have met the criteria pursuant to Act 207 (SLH 2011), which was already in effect when the first KIA lease extension was approved. There is nothing unfair or misleading about this assessment.

There is also a question as to whether some of the "substantial improvements" were routine repairs and maintenance, and installation of business equipment instead. For example, roof and gutter repairs (versus replacement); roof resurfacing; replacement of skylights, gutters, and deteriorated sections of building; painting; repairing termite damage; and replacement of a fuel distribution pump (which is business equipment and not part of the building). Also, in a few cases, the lessees were given credit for improvements made in prior years.

In addition, some proposed improvements were nominal and would not normally require a full 10-year extension period to amortize the costs of self-financed improvements.

## Fact Check: Accounting Records



### The Issue

In November 2017, at DLNR's request, the Office of the Auditor contracted N&K CPAs, Inc. (N&K) to audit DLNR's financial statements for the fiscal year ended June 30, 2017; however, the auditors were unable to complete the audit by the February 16, 2018, target date because they found significant irregularities in the department's accounting records. In one instance, DLNR's schedule of capital assets differed from what is reported in the State's accounting records by approximately \$626.6 million.

DLNR subsequently hired a consultant, KMH, to assist in getting the accounting records into auditable shape so that N&K could be able to complete its work. The clean up was completed in February 2019 and the audit was completed in April 2019.

### The Facts

Report drafters claim that the use of the term "cleaning up" to describe the work that the consultant did to get DLNR's financial records into auditable condition was misleading, pointing out that other state agencies do not organize their accounting records on an accrual basis. However, N&K identified five findings, with only the first finding related to preparing accrual basis financial statements. The remaining audit findings related to improper accounting for construction in progress, not performing reconciliations for several years, a lack of written formal procedures for delinquent receivables or writing off uncollectible balances, and untimely remittance of ceded land revenues to OHA. There is nothing misleading about describing the nature of KMH's work for DLNR as "cleaning up."

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## Fact Check: Forged Easement



### The Issue

On October 20, 2021, Chair Belatti announced that the committee would be pursuing “a larger pattern by the Auditor to unilaterally decide not to report on certain substantive and critical issues discovered in the field, including in some cases of criminal and potentially criminal acts.” She made this announcement before introducing the first of several witnesses whose recollections supposedly necessitated this change of direction in the committee’s investigation. That witness, Ronald Shiigi, former Administrative Deputy Auditor, gave an account of a fraud, a forged signature on an easement on Kaua’i, by a former DLNR Land Division employee that went unreported by the Office of the Auditor. Mr. Shiigi, who was the supervisor on the audit, claimed that he was made aware of the fraud by two analysts he supervised and passed the information along to the Auditor.

## The Facts

An auditor must report fraud or suspected fraud uncovered during the audit to department management. Conversely, an auditor is not required to report fraud or suspected fraud that is already known to management.

While Mr. Shiigi should know when fraud needs to be reported, he nevertheless implied that the Auditor had arbitrarily dropped the matter. Mr. Shiigi could not recall the details of his conversations with the two analysts regarding the fraud or any subsequent discussions with the Auditor.

Mr. Shiigi's claims of negligence were quickly and easily refuted by committee member Representative Dale Kobayashi, who pointed out that not only had DLNR been aware of the fraud *before* the office's analysts discovered it, but the Department of the Attorney General had prosecuted the case and secured a verdict. Later that day, DLNR Chairperson Suzanne Case confirmed to Chair Belatti that DLNR had forwarded the case to the Attorney General long before she met with Mr. Shiigi and the audit team. Undeterred, Chair Belatti noted that it was still unclear if the fact the fraud had been fully prosecuted had been evident to members of the audit team at the time. If Chair Belatti was truly interested in gaining clarity on this and other issues, she could have just asked the Auditor. She did not.

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## Fact Check: Non-profits



### The Issue

During the investigative committee's September 20, 2021, hearing, former Administrative Deputy Auditor Ronald Shiigi testified that, during the audit of the Land Division's Special Land and Development Fund, he became aware that a nonprofit had lost its non-profit status after it had failed to file paperwork with the IRS. According to Mr. Shiigi, he was concerned that such a change in status could alter the lease agreement the one-time nonprofit had with the State, since, generally, nonprofits receive a break on lease rent. Mr. Shiigi said he raised the issue with the Auditor, but the matter wasn't pursued because it was not considered significant. He did not provide any details about this discussion with the Auditor, nor could he recall details of his discussions of the issue with his audit team members. He also could not recall the identity of the one-time nonprofit.

In response to Mr. Shiigi's testimony, the investigative committee issued two recommendations, one of which was incomplete. The incomplete recommendation was undecided as to whether DLNR

should be allowed to offer nonprofits reduced lease rents. The other recommendation asked DLNR to follow up on potential loss of non-profit status of lessees and the impact that might have on leases.

#### The Facts

The unnamed lessee that Mr. Shiigi referred to is the Sand Island Business Association (SIBA), which is the Land Division's largest revenue-generating lessee. While it was a nonprofit, SIBA was not a charitable organization and had been paying fair market rent. Therefore, when SIBA's non-profit status changed, its lease rent did not. It continued to pay fair market rent. SIBA was aware of this, the Land Division was aware of this, the Auditor and the analysts on the DLNR audit team were aware of this. Mr. Shiigi, apparently, was not. There was no need to report this issue.

We suggest that before the committee completes its recommendation that DLNR "should or should not" eliminate the discounted lease rents for nonprofits, it may consider reviewing Chapter 171-43.1, which allows DLNR to lease at nominal consideration to an eleemosynary (charitable) organization that has been certified to be tax exempt under Sections 501(c)(1) or 501(c)(3) of the IRS Code.

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## Fact Check: Unreported Issues



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### The Facts

It is untrue that the Office of the Auditor did not review “contracts, grants, and memoranda of understanding involving SLDF” as the commentary suggests. As the then-chairs of the Senate and House subject matter committees noted to the Auditor, the land leases and revocable permits are the Land Division’s more significant, if not most significant, contracts and are the most significant source of revenue to the Special Land and Development Fund. Those revenues fund the Land Division and a number of other DLNR programs. Report No. 19-12 reviewed, among other things, the Land Division’s management of its income-producing leases and revocable permits.

As Act 209 (SLH 2017) instructed, KKDLY, LLC prepared a schedule of expenditures by cost category. The audit also covered the selected vendors that were paid more than \$100,000 in aggregate and reviewed invoices for proper approval, for compliance with government procurement procedures, and propriety of disbursements, a wider – not narrower – review than what the Legislature requested. KKDLY did not have any finding regarding the contracts, grants, and memoranda of understanding involving the Special Land and Development Fund; therefore, no findings were included in the report.

Note: Including the Land Division Administrator’s “something to the effect” recollection of an alleged conversation he had with Auditor as evidence of anything is meaningless and unprofessional.

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## IV. Response to Draft Report Chapter 3 – “Agribusiness Development Corporation”

Throughout this report, beginning with the first recommendation, the committee incorrectly labels our findings “criticism.” To be clear, we present findings that include objective, fact-based analyses based on substantive and relevant evidence. We are concerned that the committee’s dismissive language and tone could mislead readers into thinking that our real and significant findings are merely unsupported criticisms that can be disregarded.

Generally, the committee agreed with nearly all of our recommendations to ADC. In one exception, the committee disagreed that ADC should get an opinion on rent credits from the State Procurement Office. Other areas of stated “disagreement” related to statutory requirements in section 163D, HRS, that only the Legislature – not the Office of the Auditor or ADC – can amend. If the committee’s proposed amendments to ADC’s enabling statute become law, the 2021 audit recommendations would become obsolete and subsequent audits would assess whether ADC’s policies and procedures comply with the updated mandates. In any event, they are not simply recommendations made by the Auditor. They are legal requirements that we “recommend” ADC fulfill unless and until the requirements are amended or repealed by the Legislature.

However, it is both concerning and frustrating that the committee, in its attempt to find fault with the audit and the Auditor, claims that the audit is somehow incomplete because we omitted the management of ADC’s lands on Kaua’i. As we explain below, our audit, properly scoped, found significant administrative and governance problems that impact all ADC holdings. We also provide important context to another recommendation that involves changes in policy that could have wide-ranging effects on the agency and the public. We suggest that the committee consider the following facts before finalizing its report recommendations.

Office of the Auditor's Response to Draft Report of the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01

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## Fact Check: Enabling Legislation



66 Written Response / January 14, 2022

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## The Facts

The realization that Hawai'i's agricultural industry is no longer just about export and large-scale farmers is why ADC was created in the first place – to fill the growing economic void in the wake of sugar and pineapples departure from the Islands. The Legislature granted ADC powers and exemptions unique in Hawai'i state government that afford the corporation unrivaled flexibility to bring former plantation infrastructure back into production. Among other things, ADC is statutorily authorized to acquire, own, and sell land; lease or sell its lands to agricultural enterprises and farmers without having to go through a public auction process; invest in enterprises engaged in agricultural crop development, development of new value-added crops, and enhancement of existing agricultural commodities; issue revenue bonds to finance acquisitions; create subsidiaries; and even reorganize itself as a nonprofit organization.

It is true that sugar and pineapple are long gone, but the need for a vibrant and diversified agriculture industry is now more important than ever. And that includes a robust sector for exports and large-scale farming. The fact that after nearly 30 years in existence, ADC has not addressed this necessity does not mean that the need no longer exists, and the State should abandon efforts. The fact is that Hawai'i's agriculture industry is shrinking and the economic void left after the departure of sugar and pineapple continues to widen.

The committee reasons that paring down ADC's statutory duties to fit its current capabilities will eliminate unnecessary duplication that could occur throughout the Department of Agriculture. However, by stripping away ADC's legislative mandate, the committee could potentially exacerbate redundancies throughout the department by creating a duplicate agency. The department already has the Agricultural Park program, which provides for the space and support of the state's small farmers. However, the department does not have another agency that is purposely built to attract and cultivate support for large-scale agricultural operations.

## Fact Check: Omissions



### The Facts

Determining the scope and objectives of a performance audit involves more than acreage counts and Google searches. During the planning phase of an audit, which can take up to a third of an entire audit period, analysts do extensive research to obtain background information on an agency, reviewing such things as statutory requirements, mission and vision statements, and annual reports, among many other things. Analysts meet with the agency, request documents, conduct preliminary interviews, and make initial observations to determine audit objectives, which are often questions the audit will try to answer.

The first audit objective, "Describe ADC's process for acquiring former plantation lands and facilitating their transition to other agricultural uses," did not include ADC's lands on Kaua'i. Those lands were transferred to ADC from another state agency and the majority of the lands were under license agreements that ADC assumed. For that reason, we did not assess ADC's process to acquire those

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lands. However, the lack of an agribusiness development plan and other statutorily required components to that plan, like marketing and transportation, very likely apply to and would benefit all ADC tenants.

However, contrary to what the committee believes, our audit *did* include ADC's management of its Kaua'i lands. We requested tenant files for seven of ADC's 83 tenants, which we randomly selected for review. When we were provided those files, which staff had to create in response to our request, we found none were complete. We then asked to review the files for the remaining 76 tenants, which include all of the tenants occupying ADC lands on Kaua'i. Staff, however, could only assemble the files for 71 of the remaining 76 tenants. To the extent the documents were included in the files created by ADC, we reviewed the copy of the tenant's initial application, the corporation's ranking and selection of the tenant, board approval to issue a tenant contract, the tenant contract, determination of annual rents, insurance certificates, site inspection reports, tenant ledgers, notices of default, general correspondence, and any other significant documentation relevant to the management of the specific lease, license, or permit relating to 78 of ADC's tenants, the majority of which are on Kaua'i lands.

Our finding, *ADC's land management struggles – inconsistent, incomplete, and, in many cases, non-existent record keeping; prospective tenants occupying lands without signed written agreements; and persistent criminal activity on its properties – expose the State to unnecessary risk*, includes those lands ADC controls in the Wahiawā and Whitmore Village areas on O'ahu as well as the Kekaha and Kalepa areas on Kauai. And, while we did not distinguish the tenant files by island, we described the condition of the files we had been provided – missing and incomplete documents – that were generally applicable to all of the files.

To make matters worse, the committee's recommendation to the Office of the Auditor includes the editorial note "Discuss here that 3 of the outstanding matters that delayed KMH/Accuity financial audit work were ALL Kauai matters," which appears to be an attempt to further develop its Kaua'i conspiracy theory into a larger story of wrongdoing. We hope this is not the case.

The real reason that ADC's financial audit is delayed is that its financial records – like its tenant files – didn't exist when auditors asked for them. ADC had to hire another accounting firm to collect and create such a financial record. While the committee heard testimony from Ross Murakami of KMH stating KMH's work was completed by September 2021, the financial auditor, Accuity, provided observations to ADC and KMH requiring further revisions from KMH. ADC management did not review KMH's work product

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Office of the Auditor's Response to Draft Report of the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01

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until December 2021. Accuity reported that the House Investigative Committee's investigation in the fall of 2021 required ADC's immediate attention, delaying the completion of the audit. ADC acknowledged Accuity's requests but did not provide a timetable for the completion of outstanding requests. Additionally, the latest delay in the completion of the financial audit is due to a potential environmental remediation obligation from a fire in September 2021 on an O'ahu, not Kaua'i, property. ADC procured an environmental consultant in December 2021 to assess the potential liability and as of December 31, 2021, Accuity had not received an update from ADC on the environmental assessment.

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## V. Conclusion

We welcome the committee's interest in, and efforts at, remedying the significant problems in two state agencies disclosed by the audits that were the subject of House Resolution No. 164. We also welcome honest, thoughtful, and independent review and feedback. We are subject to a regular, nationally-recognized, peer-review process, conducted by independent professionals proficient in performance audits, and we have passed with flying colors every time. Strangely, that is never mentioned in the draft report.

Of course, while we welcome the committee's assistance in addressing and remedying the problems we discovered in the two state agencies, we cannot welcome the effort by some to use the opportunity provided by the resolution to conjure up evidence of some sort of misconduct by the Auditor. That effort is mistaken, inappropriate, and counter-productive. That effort also exceeds the authority delegated to the committee from the broader House in the resolution, which was specific, limited, and narrowly confined to two specific audits of two specific agencies. The authorizing resolution is the source of both the power the committee can exercise and the limits to that power. In other words, delegated authority is all the authority the committee has. It does not possess the inherent powers possessed by the broader Legislature. It cannot simply pick and choose what it wishes to investigate.

An investigation conducted beyond the boundaries of legitimate legal authority is not just a legal issue. It is also an ethical issue, and it contributes to the public perception – justified or not – of political shenanigans in state government. If it is intentional, then acting beyond the legal and authorized boundaries of a specific grant of investigative authority may even itself be potential evidence of misconduct. It also smacks of political interference in matters that should be above political interference. The task of being a public “watchdog” in Hawai'i is hard enough without being treated like a fire hydrant.

As shown in great detail in the body of our response, the committee's draft report is defective in many ways. For example, though it is subtitled “findings and recommendations,” the draft is devoid of any findings whatever. A half-complete draft is no more practical or useful than a half-complete ship. Neither should be launched before it is completed. Neither is a very useful or trustworthy way of getting from A to B. The draft report also suffers from significant and recurrent



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inaccuracies, also detailed above, even apart from the absence of any findings.

Finally, the committee has repeatedly failed to live up to its statutory obligation to be "fair and impartial." Minor departures from that obligatory statutory norm might be understandable. But the departures we have laid out are not minor. They infect the whole tone and tenor of the draft report. A legislative committee tasked with conducting itself in a "fair and impartial manner" should never allow itself to become the vehicle for what has all the hallmarks of a political "hit job."

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## APPENDIX E: DLNR LIST OF CONTRACTS

Revised 7/31/2017

Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
C60471	08/17/15	\$ 18,000	Medusky & Co., Inc.	Appraisal Services	Land	Russell Y. Tsuji
C60522	08/25/15	\$ 3,159	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C60523	08/25/15	\$ 34,800	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C60546	08/31/15	\$ 12,398	Hastings, Conboy, Braig & Associates, Ltd.	Appraisal Services	Land	Russell Y. Tsuji
C60695	09/18/15	\$ 175,000	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C60706	09/21/15	\$ 5,700	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C60787	09/25/15	\$ 937	Andrew P. Wilson, Attorney at Law, LLC	Appraisal Services	Land	Russell Y. Tsuji
C61049	10/19/15	\$ 9,229	Hastings, Conboy, Braig & Associates, Ltd.	Appraisal Services	Land	Russell Y. Tsuji
C61050	10/19/15	\$ 11,000	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C61258	11/09/15	\$ 6,000	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C61259	11/09/15	\$ 6,200	Medusky & Co., Inc.	Appraisal Services	Land	Russell Y. Tsuji
C61262	11/09/15	\$ 6,900	Medusky & Co., Inc.	Appraisal Services	Land	Russell Y. Tsuji
C61320	11/17/15	\$ 1,411	Appraisal Hawaii Inc.	Appraisal Services	Land	Russell Y. Tsuji
C61391	12/02/15	\$ 8,900	Medusky & Co., Inc.	Appraisal Services	Land	Russell Y. Tsuji
C61527	12/17/15	\$ 11,759	Hastings, Conboy, Braig & Associates, Ltd.	Appraisal Services	Land	Russell Y. Tsuji
C61528	12/17/15	\$ 8,729	Hastings, Conboy, Braig & Associates, Ltd.	Appraisal Services	Land	Russell Y. Tsuji
C61529	12/17/15	\$ 7,200	Medusky & Co., Inc.	Appraisal Services	Land	Russell Y. Tsuji
C61803	01/19/16	\$ 14,500	John Child & Company, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C61866	01/26/16	\$ 12,104	Hastings, Conboy, Braig & Associates, Ltd.	Appraisal Services	Land	Russell Y. Tsuji
C61867	01/26/16	\$ 647	Appraisal Hawaii Inc.	Appraisal Services	Land	Russell Y. Tsuji
C61868	01/26/16	\$ 12,104	Hastings, Conboy, Braig & Associates, Ltd.	Appraisal Services	Land	Russell Y. Tsuji
C61869	01/26/16	\$ 5,935	Appraisal Hawaii Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62141	02/29/16	\$ 11,000	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62142	02/29/16	\$ 16,300	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62143	02/29/16	\$ 11,000	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62144	02/29/16	\$ 12,500	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62145	02/29/16	\$ 5,410	Appraisal Hawaii, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62212	03/02/16	\$ 16,000	Medusky & Co., Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62246	03/15/16	\$ 5,000	Medusky & Co., Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62247	03/15/16	\$ 5,104	Appraisal Hawaii, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62258	03/16/16	\$ 5,620	Appraisal Hawaii, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62660	05/06/16	\$ 15,400	John Child & Company, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62661	05/06/16	\$ 15,400	John Child & Company, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62662	05/06/16	\$ 2,781	Appraisal Hawaii, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62779	05/16/16	\$ 2,357	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62780	05/16/16	\$ 1,440	Hastings, Conboy, Braig & Associates, Ltd.	Appraisal Services	Land	Russell Y. Tsuji
C62781	05/16/16	\$ 6,000	Appraisal Hawaii, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62782	05/16/16	\$ 2,500	Appraisal Hawaii, Inc.	Appraisal Services	Land	Russell Y. Tsuji

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Revised 7/31/2017

Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
C62783	05/16/16	\$ 6,250	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62865	05/18/16	\$ 3,365	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62866	05/18/16	\$ 8,259	Hastings, Conboy & Associates, Ltd.	Appraisal Services	Land	Russell Y. Tsuji
C62867	05/18/16	\$ 6,250	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62868	05/18/16	\$ 7,750	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62869	05/18/16	\$ 19,500	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62870	05/18/16	\$ 11,150	Appraisal Hawaii, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62871	05/18/16	\$ 15,500	Medusky & Co., Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62872	05/18/16	\$ 15,000	Medusky & Co., Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62873	05/18/16	\$ 6,250	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62874	05/18/16	\$ 6,250	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62875	05/18/16	\$ 864	Hastings, Conboy & Associates, Ltd.	Appraisal Services	Land	Russell Y. Tsuji
C62876	05/18/16	\$ 77,359	Hastings, Conboy & Associates, Ltd.	Appraisal Services	Land	Russell Y. Tsuji
C62877	05/18/16	\$ 35,663	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62878	05/18/16	\$ 31,500	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C62908	05/19/16	\$ 75,000	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C63017	05/24/16	\$ 8,500	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C63018	05/24/16	\$ 8,500	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C63019	05/24/16	\$ 1,604	Andrew P. Wilson, Attorney at Law, LLC	Appraisal Services	Land	Russell Y. Tsuji
C63022	05/24/16	\$ 8,500	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C63023	05/24/16	\$ 18,700	John Child & Company, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C63081	05/31/16	\$ 7,250	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C63315	06/17/16	\$ 6,500	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C70130	07/22/16	\$ 1,269	The Hallstrom Group/CBRE, Inc.	Mediation Services	Land	Russell Y. Tsuji
C70131	07/22/16	\$ 2,187	The Hallstrom Group/CBRE, Inc.	Mediation Services	Land	Russell Y. Tsuji
C70238	08/03/16	\$ 5,500	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C70239	08/03/16	\$ 175	The Hallstrom Group/CBRE, Inc.	Mediation Services	Land	Russell Y. Tsuji
C70279	08/10/16	\$ 6,500	Medusky & Co., Inc.	Appraisal Services	Land	Russell Y. Tsuji
C70380	08/23/16	\$ 7,000	Medusky & Co., Inc.	Appraisal Services	Land	Russell Y. Tsuji
C70383	08/23/16	\$ 8,260	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C70384	08/23/16	\$ 4,500	Appraisal Hawaii Inc.	Arbitration Services	Land	Russell Y. Tsuji
C70440	08/29/16	\$ 9,500	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C70466	08/30/16	\$ 6,500	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C70494	09/08/16	\$ 6,500	Medusky & Co., Inc.	Appraisal Services	Land	Russell Y. Tsuji
C70660	09/28/16	\$ 5,500	Medusky & Co., Inc.	Appraisal Services	Land	Russell Y. Tsuji
C70941	10/25/16	\$ 4,565	The Hallstrom Group/CBRE, Inc.	Mediation Services	Land	Russell Y. Tsuji
C70942	10/25/16	\$ 6,147	Appraisal Hawaii Inc.	Arbitration Services	Land	Russell Y. Tsuji
C70944	10/25/16	\$ 7,000	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C70945	10/25/16	\$ 5,000	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji

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Revised 7/31/2017

Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
C70949	10/25/16	\$ 4,230	Leshar Chee Stadlbauer, Inc.	Arbitration Services	Land	Russell Y. Tsuji
C71186	11/17/16	\$ 2,461	Medusky & Co., Inc.	Mediation Services	Land	Russell Y. Tsuji
C71246	12/02/16	\$ 5,250	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C71268	12/09/16	\$ 1,250	Andrew P. Wilson, Esq.	Arbitration Services	Land	Russell Y. Tsuji
C71367	12/27/16	\$ 2,370	The Hallstrom Group/CBRE, Inc.	Mediation Services	Land	Russell Y. Tsuji
C71706	1/23/2017	\$ 8,969.00	Hastings, Conboy & Associates, Ltd.	Appraisal Services	Land	Russell Y. Tsuji
C71872	2/8/2017	\$ 5,750.00	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72059	3/1/2017	\$ 7,500.00	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72100	3/7/2017	\$ 5,000.00	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72101	3/7/2017	\$ 5,000.00	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72102	3/7/2017	\$ 7,969.00	Hastings, Conboy & Associates, Ltd.	Appraisal Services	Land	Russell Y. Tsuji
C72103	3/7/2017	\$ 11,000.00	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72104	3/7/2017	\$ 10,353.40	Yamaguchi & Yamaguchi, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72105	3/7/2017	\$ 19,136.12	Yamaguchi & Yamaguchi, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72106	3/7/2017	\$ 17,000.00	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72107	3/7/2017	\$ 4,500.00	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72108	3/7/2017	\$ 20,000.00	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72110	3/7/2017	\$ 11,000.00	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72153	3/15/2017	\$ 25,602.10	Appraisal Hawaii Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72205	3/17/2017	\$ 9,800.00	Leshar Chee Stadlbauer, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72206	3/17/2017	\$ 9,800.00	Leshar Chee Stadlbauer, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72207	3/17/2017	\$ 10,500.00	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72208	3/17/2017	\$ 12,395.87	Yamaguchi & Yamaguchi, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72209	3/17/2017	\$ 11,875.03	Yamaguchi & Yamaguchi, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72210	3/17/2017	\$ 729.16	The Hallstrom Group/CBRE, Inc.	Mediation Services	Land	Russell Y. Tsuji
C72225	3/20/2017	\$ 2,565.44	Hastings, Conboy & Associates, Ltd.	Mediation Services	Land	Russell Y. Tsuji
C72470	4/11/2017	\$ 5,500.00	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72495	4/12/2017	\$ 5,500.00	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72496	4/12/2017	\$ 4,500.00	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72549	4/19/2017	\$ 20,000.00	The Hallstrom Group/CBRE, Inc.	Consulting Services	Land	Russell Y. Tsuji
C72847	5/25/2017	\$ 273,000.00	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72855	5/26/2017	\$ 6,500.00	Medusky & Co., Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72856	5/26/2017	\$ 6,200.00	ACM Consultants, Inc.	Appraisal Services	Land	Russell Y. Tsuji
C72857	5/26/2017	\$ 14,500.00	The Hallstrom Group/CBRE, Inc.	Appraisal Services	Land	Russell Y. Tsuji

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Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
P.O. C60188	07/20/15	\$ 14,083	Big Island Tree Service, Inc.	Clear albizia trees along 300' border on vacant state land located adjacent to Hawaiian Paradise Park residential subdivision, Makuu, Puna, HI, TMK: (3) 1-5-10:02	Hawaii District Land Office	Candace Martin
P.O. C60788	09/25/15	\$ 5,000	Tree Works, Inc.	Emergency arborist services to cut and remove large Kamani tree that fell from state land, TMK: (3) 2-1-05:12, seaward of Uncle Billy's Hotel, Banyan Dr., Hilo, HI; due to Hurricanes Ignacio & Jimena, tree could pose marine debris hazard/cause damage to hotel buildings/property.	Hawaii District Land Office	Candace Martin
P.O. C61260	11/09/15	\$ 6,500	Tree Works, Inc.	Emergency tree removal services-cut down & remove ironwood tree from state land, TMK: (3) 2-1-07:25 that fell onto house at 503 Oceanview Dr., Hilo, HI; fallen tree caused damage to toof, rafters, etc. & restricting access.	Hawaii District Land Office	Gordon Heit
P.O. C61380	12/02/15	\$ 4,500	Big Island Tree Service, Inc.	Clear albizia trees along 200' border on vacant state land adjacent to Hawaiian Beaches residential subdivision, Waiakahiula, Puna, HI, trees have grown along the shared border with TMK: (3) 1-5-79:62.	Hawaii District Land Office	Candace Martin
P.O. C61379	12/08/15	\$ 3,000	Tree Works, Inc.	state parcel, TMK: (3) 2-5-06:01, at Kukuau 2nd, S.Hilo, HI, Cut and drop overgrown trees & cut back Philodendron, unencumbered state land at Manowaiopae Homesteads, N.Hilo, HI, TMK: (3) 3-6-07:Por. of 22.	Hawaii District Land Office	Dan Gushiken
P.O. C61778	01/21/16	\$ 7,500	Tree Works, Inc.	Complete initial cleanup; provide monthly maintenance of state land, TMK: (3) 2-5-03:Por. of 21.	Hawaii District Land Office	Gordon Heit
P.O. C61779	01/21/16	\$ 875	Big Island Tree Service, Inc.	Complete initial cleanup; provide monthly maintenance of state land, TMK: (3) 2-2-48:01, vacated orchid farm, Waiakea, Hilo, HI.	Hawaii District Land Office	Gordon Heit
P.O. C61775	01/26/16	\$ 65,800	Imua Landscaping Co., Inc.	Cut and drop overgrown trees & vegetation on unencumbered state land, Waiakea, S.Hilo, HI, TMK: (3) 2-4-33:18.	Hawaii District Land Office	Candace Martin
P.O. C61865	02/22/16	\$ 18,000	Arborist Services, LLC	Monthly maintenance of state land, Waiakea, Hilo, HI, TMK: (3) 2-4-41:45.	Hawaii District Land Office	Gordon Heit
P.O. C62098	03/02/16	\$ 12,000	Running Logistics LLC	Cut and drop pre-identified trees on unencumbered state parcel, Piihonua, S.Hilo, HI, TMK: (3) 2-5-10:01.	Hawaii District Land Office	Candace Martin
P.O. C62168	03/04/16	\$ 3,583	Big Island Tree Service, Inc.	Cleanup & remove all debris at abandoned campsite on unencumbered state land, Makeanehu, N.Kohala, HI, TMK: (3) 5-8-01:12.	Hawaii District Land Office	Dan Gushiken
P.O. C62655	05/11/16	\$ 8,337	Makanamaikalani Construction LLC	unencumbered state parcel, Waiakea, S.Hilo, HI, TMK: (3) 2-4-42586	Hawaii District Land Office	Gordon Heit
P.O. C70122	05/11/16	\$ 3208.34	Big Island Tree Service, Inc.	Cut and drop overgrown trees & vegetation, cutting 25' buffer into unencumbered state land, Waiakea, S.Hilo, HI, TMK: (3) 2-3-15:31 & 2-3-26:04.	Hawaii District Land Office	Gordon Heit
P.O. C70129	08/29/16	\$ 4,600	Tree Works, Inc.	Complete initial cleanup; provide monthly maintenance of state owned ditch, TMK: (3) 2-3-23:06, Piihonua, S.Hilo, HI, to prevent flooding & possible damage to structures on private property.	Hawaii District Land Office	Gordon Heit
P.O. C70280	08/29/16	\$ 4,880	Hilo Landscaping	Cut and drop overgrown trees along northern border of vacant state parcel at por. of Waiakea Cane Lots, Waiakea, S.Hilo, HI, TMK: (3) 2-4-01:121.	Hawaii District Land Office	Dan Gushiken
P.O. C71187	11/03/16	\$ 11,667	Big Island Tree Service, Inc.	Cut and drop overgrown weed trees along borders of private properties adjacent to unencumbered state parcel, Por. of Punahou 2nd, S.Hilo, HI, TMK: (3) 2-3-30:02.	Hawaii District Land Office	Dan Gushiken
P.O. C71188	11/03/16	\$ 22,000	Harlan T. Langi	Cut 60' buffer into unencumbered state parcel, Keonopoki Iki, Puna, HI, TMK: (3) 1-5-09:Por. of 09.	Hawaii District Land Office	Dan Gushiken
P.O. C71028	11/09/16	\$ 11,950	Big Island Tree Service, Inc.		Hawaii District Land Office	Gordon Heit

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12,000 Gross

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Revised 7/31/2017

Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
P.O. C71026	11/09/16	\$ 4,000	Arborist Services, LLC	Cut and remove all trees on unencumbered state parcel, Waiiaka, S.Hilo, HI, TMK: (3) 2-2-19:74, off Kilauea Ave, at Wailoa Bridge.	Hawaii District Land Office	Gordon Heit
P.O. C71027	11/09/16	\$ 5,900	Tree Works, Inc.	Trim overgrown limbs & remove dead wood from overgrown Banyan tree, unencumbered state land, Waiiaka, S.Hilo, HI, TMK: (3) 2-2-29:08.	Hawaii District Land Office	Gordon Heit
P.O. C71123	12/02/16	\$ 14,583	Big Island Tree Service, Inc.	Clear overhanging invasive weed trees, Piihonua, S.Hilo, HI, TMK: (3) 2-3-27:04 & 05.	Hawaii District Land Office	Candace Martin
P.O. C71239	12/13/16	\$ 19,792	Imua Landscaping Co., Inc.	Clear invasive weed trees, shrubs, & undergrowth along 40' border along sides of vacant state parcel, Kuhlani St., Waiiaka, Hilo, HI, TMK: (3) 2-4-12:02.	Hawaii District Land Office	Candace Martin
P.O. C71873	02/14/17	\$ 4,250	Big Island Tree Service, Inc.	Cut and drop trees & vegetation, clearing 20' buffer into unencumbered state parcel adjacent to Wailuku Park Townhouse, Waiiaka, S.Hilo, HI, TMK: (3) 2-3-15:31.	Hawaii District Land Office	Gordon Heit
P.O. C72468	03/17/17	\$ 1,459	Big Island Tree Service, Inc.	Cut and drop trees & vegetation creating 100' buffer on eastern half of state parcel, Waiiaka Homesteads, S.Hilo, HI, TMK: (3) 2-4-41:03.	Hawaii District Land Office	Dan Gushiken

20170727 #10 Listing of all contracts ... #3.xlsx / HDLO; 5/20

DLNR-LD-012894  
 Dan Gushiken Gross

# APPENDICES

Revised 7/31/2017

Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
P.O. C70563	07/18/16	\$ 13,900	Kauai Nursery & Landscaping, Inc.	Complete removal of Cluster of Monkeypod Tress growing near Warehouse Building and Parking area. Proper Disposal of Greenwaste and Area Cleanuo required. TMK: (4) 1-9-05:009 and (4) 1-9-005:049. State Land Encumbered by GL-4275 to Denny's Repair, Hanapepe, Kauai	Kauai District Land Office	Kurt Yasutake
P.O. C71122	10/24/16	\$ 8,178	T & M Environmental, LLC	Wailua Homesteads, Cart Path. Twenty (20) Foot-wide cart path tree trimming & clearing along 100 twenty (120) foot length beginning from Kuamoo Road entrance, TMK: (4) 4-2-009:999	Kauai District Land Office	Kurt Yasutake
P.O. C71405	11/21/16	\$ 2,600	Kauai Nursery & Landscaping, Inc.	Lower Kapahi Reservoir Maintenance, TMK: (4) 4-6-006:007. Maintain inlet and outlet culvert or reservoir. Trees, grass and weed clearing of inlet and outlet culvert. Any large debris will be removed, dead tree stumps, cutting of trees growing in the lower basin or along walls of reservoir. Maintenance will consist of weed wacking or ground cover to keep it low to the ground. Spray are around inlet and outlet for vegetation growth. Spray with environmentally friendly herbicide. Maintenance will occur every other month, or when requested for a one (1) year period	Kauai District land Office	Marvin Mikasa
P.O. C71406	11/21/16	\$ 12,000	Kauai Nursery & Landscaping, Inc.	Upper Kapahi Reservoir Maintenance, TMK: (4) 4-6-07:11. Maintenance of "floor" of Upper Kapahi Reservoir - trees with diameter greater than 4 inches are to be cut 12 inches above ground. Trees with diameter less than 4 inches are to be cut as close to the ground as possible. Apply growth inhibitor/herbicide such as Garion to stumps only. Not on grass. Maintenance shall include removal of any and all regrowth of noxious plants and the cutting of grass on the reservoir floor. This will prevent inlet from blockage. All cut materials (trees, plants, grass cuttings) are to be removed and hauled away to an licensed landfill or recycled for grass waste. Maintenance of spillways (inside & outside of reservoir) from the bottom to the top of Kainahola Road. Maintenance contract will be for one (1) year, subject to cancellation with thirty (30) day notice	Kauai District Land Office	Marvin Mikasa
P.O. C72761	04/21/17	\$ 5,729	The Tow Truck, LLC	Removal of (4) cars, one (1) truck backbed, one (1) trailer, one (1) vehicle frame and one (1) small bulldozer located on a parcel adjacent to Waimea Beach on Kahakai Road. Dispose of Vehicles and vehicle accessories at Puhi Metals Recycling Facility. Dispose of trash inside and/or on vehicles. TMK: (4) 1-6-017:005	Kauai District Land Office	Kurt Yasutake

20170727 #10 Listing of all contracts ... #3.xlsx / KDLO; 6/20

DLNR-LD-012895

# APPENDICES

Revised 7/31/2017

Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
PO #C60520	08/25/15	\$ 1,500	Aloha Petroleum, Ltd	Gas charges--Account No. 62206: SH-9768, 2000 Ford; SH-C554, 2007 Dodge Durango; F688 Toyota 4Runner. For period July 1, 2015 - June 30, 2016	ODLO	Barry Cheung
PO #C70381	08/23/16	\$ 1,500	Aloha Petroleum, Ltd	Gas charges--Account No. 62206: SH-9768, 2000 Ford; SH-C554, 2007 Dodge Durango; F688 Toyota 4Runner. For period July 1, 2016 - June 30, 2017	ODLO	Barry Cheung
Journal Voucher Entry-Debit: 804-S-16-318-C-5501-0520-000000-00-050	07/06/15	\$ 450	DAGS:Auto motive Mgmt Div-Parking Control Br	Ortly charge for the rental of Parking Stall(s): July 1, 2015 - September 30, 2015; 3 car(s) Stall rental @\$50.00/mo; SH-9768, 2000 Ford; SH-C554, 2007 Dodge Durango; F688 Toyota 4Runner	ODLO	Barry Cheung
Journal Voucher Entry-Debit: 804-S-16-318-C-5501-0520-000000-00-050	09/10/15	\$ 20	DAGS:Auto motive Mgmt Div-Parking Control Br	Safety Check for: SH-9768, 2000 Ford; SH-C554, 2007 Dodge Durango @\$10.00 ea	ODLO	Barry Cheung
Journal Voucher Entry-Debit: 804-S-16-318-C-5501-0520-000000-00-050	01/19/16	\$ 450	DAGS:Auto motive Mgmt Div-Parking Control Br	Ortly charge for the rental of Parking Stall(s): October 1, 2015 - December 31, 2015; 3 car(s) Stall rental @\$50.00/mo; SH-9768, 2000 Ford; SH-C554, 2007 Dodge Durango; F688 Toyota 4Runner	ODLO	Barry Cheung
Journal Voucher Entry-Debit: 804-S-16-318-C-5501-0520-000000-00-050	01/07/16	\$ 450	DAGS:Auto motive Mgmt Div-Parking Control Br	Ortly charge for the rental of Parking Stall(s): January 1, 2016 - March 31, 2016; 3 car(s) Stall rental @ \$50.00/mo; SH-9768, 2000 Ford; SH-C554, 2007 Dodge Durango; F688 Toyota 4Runner	ODLO	Barry Cheung
Journal Voucher Entry-Debit: 804-S-16-318-C-5501-0520-000000-00-050	04/04/16	\$ 450	DAGS:Auto motive Mgmt Div-Parking Control Br	Ortly charge for the rental of Parking Stall(s): April 1, 2016 - June 30, 2016; 3 car(s) Stall rental @ \$50.00/mo; SH-9768, 2000 Ford; SH-C554, 2007 Dodge Durango; F688 Toyota 4Runner	ODLO	Barry Cheung
Journal Voucher Entry-Debit: 804-S-17-318-C-5501-0520-000000-00-050	07/07/16	\$ 450	DAGS:Auto motive Mgmt Div-Parking Control Br	Ortly charge for the rental of Parking Stall(s): July 1, 2016 - September 30, 2016; 3 car(s) Stall rental @ \$50.00/mo; SH-9768, 2000 Ford; SH-C554, 2007 Dodge Durango; F688 Toyota 4Runner	ODLO	Barry Cheung
Journal Voucher Entry-Debit: 804-S-17-318-C-5501-0520-000000-00-050	09/12/16	\$ 20	DAGS:Auto motive Mgmt Div-Parking Control Br	Safety Check for: SH-9768, 2000 Ford; SH-C554, 2007 Dodge Durango @\$10.00 ea	ODLO	Barry Cheung
Journal Voucher Entry-Debit: 804-S-17-318-C-5501-0520-000000-00-050	10/05/16	\$ 450	DAGS:Auto motive Mgmt Div-Parking Control Br	Ortly charge for the rental of Parking Stall(s): October 1, 2016 - December 31, 2016; 3 car(s) Stall rental @\$50.00/mo; SH-9768, 2000 Ford; SH-C554, 2007 Dodge Durango; F688 Toyota 4Runner	ODLO	Barry Cheung
Journal Voucher Entry-Debit: 804-S-17-318-C-5501-0520-000000-00-050	01/05/17	\$ 450	DAGS:Auto motive Mgmt Div-Parking Control Br	Ortly charge for the rental of Parking Stall(s): January 1, 2017 - March 31, 2017; 3 car(s) Stall rental @ \$50.00/mo; SH-9768, 2000 Ford; SH-C554, 2007 Dodge Durango; F688 Toyota 4Runner	ODLO	Barry Cheung
Journal Voucher Entry-Debit: 804-S-17-318-C-5501-0520-000000-00-050	04/06/17	\$ 450	DAGS:Auto motive Mgmt Div-Parking Control Br	Ortly charge for the rental of Parking Stall(s): April 1, 2017 - June 30, 2017; 3 car(s) Stall rental @ \$50.00/mo; SH-9768, 2000 Ford; SH-C554, 2007 Dodge Durango; F688 Toyota 4Runner	ODLO	Barry Cheung
Journal Voucher Entry-Debit: 804-S-17-318-C-5501-0520-000000-00-050	04/11/17	\$ 10	DAGS:Auto motive Mgmt Div-Parking Control Br	Safety Check for: F688 Toyota 4Runner	ODLO	Barry Cheung

20170727 #10 Listing of all contracts ... #3.xlsx / ODLO; 7/20

DLNR-LD-012896 20170727 Gross



# APPENDICES

Revised 7/31/2017

Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
FHB-Pcard:xxxx-xxxx-xxxx-7827	07/16/15	\$ 859		BWS, Acct # 7030291729-5/6/2015-6/4/2015, \$458.68, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 6/1-30/15, \$283.70 & 5/25/15 \$48.46, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 5/25/15 \$68.08	ODLO	Orelia
FHB-Pcard:xxxx-xxxx-xxxx-7827	08/17/15	\$ 983		BWS, Acct # 7030291729-6/5/2015-7/5/2015, \$608.11, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 7/1-31/15, \$282.45, \$24.44, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 6/25/15 \$68.36	ODLO	Orelia
FHB-Pcard:xxxx-xxxx-xxxx-7827	09/15/15	\$ 1,072		BWS, Acct # 7030291729-7/6/2015-8/6/2015, \$722.49, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 8/1-31/15, \$281.22, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 7/25/15 \$68.36	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	10/21/17	\$ 933		BWS, Acct # 7030291729-8/7/2015-9/5/2015, \$587.38, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 9/1-30/15, \$277.44, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 8/25/15 \$68.39	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	11/16/15	\$ 1,026		BWS, Acct # 7030291729-9/6/2015-10/5/2015, \$680.53, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 10/1-31/15, \$276.83, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 9/25/15 \$68.39	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	12/16/15	\$ 1,461		BWS, Acct # 7030291729-10/6/2015-11/5/2015, \$1,114.34, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 11/1-30/15, \$278.10, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 10/25/15 \$68.34	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	01/19/16	\$ 941		BWS, Acct # 7030291729-11/6/2015-12/5/2015, \$596.61, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 12/1-31/15, \$276.22, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 11/25/15 \$68.34	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	02/16/16	\$ 1,374		BWS, Acct # 7030291729-12/6/2015-1/6/2016, \$484.94, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 1/1-31/16 \$274.97 & \$24.88, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 12/25/15 \$68.34; Safelife Auto Glass, SH-C554, 2007 Dodge Durango-replace windshield + labor disposable fee \$348.58; Sumida's Auto Repair-car wash SH-9768, 2000 Ford \$62.83; SH-C554, 2007 Dodge Durango \$57.59; F688 Toyota 4Runner, \$52.98	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	03/16/16	\$ 817		BWS, Acct # 7030291729-1/7/2016-2/4/2016, \$452.23, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 2/1-29/16 \$271.83 & \$24.76, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 1/25/16 \$68.52;	ODLO	Barry Cheung

20170727 #10 Listing of all contracts ... #3.xlsx / ODLO; 8/20

DLNR-LD-012897 20160727 Gross

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Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
FHB-Pcard:xxxx-xxxx-xxxx-7827	04/18/16	\$ 781		BWS, Acct # 7030291729-2/5/2016-3/5/2016, \$442.98, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 3/1-31/16 \$269.97, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 2/25/16 \$68.52;	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	05/16/16	\$ 803		BWS, Acct # 7030291729-3/6/2016-4/4/2016, \$461.48, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 4/1-30/16 \$272.47, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 3/25/16 \$68.77;	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	06/16/16	\$ 820		BWS, Acct # 7030291729-4/5/2016-5/5/2016, \$452.23, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 5/1-31/16 \$274.35 & \$24.54, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 4/25/16 \$68.49	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	07/18/16	\$ 842		BWS, Acct # 7030291729-5/6/2016-6/4/2016, \$442.98, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 6/1-30/16 \$276.83 & \$53.70, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 5/25/16 \$68.49	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	08/18/16	\$ 345		Rolloffs Hawaii, Acct# 8543, 7/1-31/16 \$276.83, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 6/25/16 \$68.49	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	09/15/16	\$ 1,328		BWS, Acct # 7030291729-6/5/2016-7/6/2016, \$448.83, & 7/7/2016 - 8/5/2016 \$483.65, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 8/1-31/16 \$276.83 & \$49.88, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 7/25/16 \$68.75	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	10/17/16	\$ 823		BWS, Acct # 7030291729- 8/6/2016 - 9/4/2016 \$464.47, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 9/1-30/16 \$290.26, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 8/25/16 \$68.75	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	11/16/16	\$ 834		BWS, Acct # 7030291729- 9/5/2016 - 10/6/2016 \$474.06, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 10/1-31/16 \$290.93, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 9/25/16 \$68.75	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	12/16/16	\$ 870		BWS, Acct # 7030291729- 10/7/2016 - 11/4/2016 \$483.65, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 11/1-30/16 \$292.91 & \$24.88, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 10/25/16 \$68.67	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	01/17/17	\$ 1,884		BWS, Acct # 7030291729- 11/5/2016 - 12/5/2016 \$483.65, 94-143 Leokane St, Waip; Rolloffs Hawaii, Acct# 8543, 12/1-31/16 \$292.91, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 11/25/16 \$68.67; Sumida's Auto Repair, SH-9768, 2000 Ford Expedition - replaced Fuel Pump and reprogrammed AL keys, \$1039.12	ODLO	Barry Cheung

20170727 #10 Listing of all contracts ... #3.xlsx / ODLO; 9/20

DLNR-LD-012898 2016 \$1,289,800 Gross

# APPENDICES

Revised 7/31/2017

Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
FHB-Pcard:xxxx-xxxx-xxxx-7827	02/16/17	\$ 362		Rolloffs Hawaii, Acct# 8543, 1/1-31/17 \$292.91, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 12/25/16 \$68.67	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	03/15/17	\$ 362		West Oahu Aggregate, Acct# 984700, 2/1-28/17 \$294.23, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 1/25/17 \$68.60	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	04/17/17	\$ 363		West Oahu Aggregate, Acct# 984700, 3/1-31/17 \$293.66, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 2/25/17 \$68.60	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	05/17/17	\$ 405		West Oahu Aggregate, Acct# 984700, 4/1-30/17 \$294.23 & \$41.88, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 3/25/17 \$68.60	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	06/15/17	\$ 384		West Oahu Aggregate, Acct# 984700, 5/1-31/17 \$294.23 & \$20.94, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 4/25/17 \$68.67	ODLO	Barry Cheung
FHB-Pcard:xxxx-xxxx-xxxx-7827	07/17/17	\$ 363		West Oahu Aggregate, Acct# 984700, 6/1-30/17 \$294.23, 94-143 Leokane St; Verizon Wireless Acct# 507127938-00001, 5/25/17 \$68.67	ODLO	Barry Cheung
PO #C71846	02/03/17	\$ 3,900	Board of Water Supply, CCH	Account No. 7030291729: 94-143 Leokane St, Waipahu, Monthly water/sewer charges for period: December 1, 2016 thru June 30, 2017: 12/6/2016 - 1/6/2017 \$632.79; 1/7/2017 - 2/4/2017 \$464.47; 2/5/2017 - 3/6/2017 \$464.47; 3/7/2017 - 4/5/2017 \$474.06; 4/6/2017 - 5/4/2017 \$493.24; 5/5/2017 - 6/3/2017 \$483.65; 6/4/2017 - 7/5/2017 \$493.24	ODLO	Barry Cheung
PO #C60521	08/25/15	\$ 850	Hawaiian Electric Co.	7/3/2015 - 8/4/2015 \$67.68; 8/5/2015 - 9/2/2015 \$61.84; 9/3/2015 - 10/2/2015 \$62.88; 10/3/2015 - 11/2/2015 \$67.28; 11/3/2015 - 12/2/2015 \$66.78; 12/3/2015 - 1/4/2016 \$69.97; 1/5/2016 - 2/1/2016 \$64.08; 2/2/2016 - 3/1/2016 \$63.08; 3/2/2016 - 4/1/2016 \$65.38; 4/2/2016 - 5/2/2016 \$63.65; 5/3/2016 - 6/2/2016 \$63.10; 6/3/2016 - 7/1/2016 \$61.12	ODLO	Barry Cheung
PO#C70382	08/23/16	\$ 850	Hawaiian Electric Co.	7/2/2016 - 8/2/2016 \$65.17; 8/3/2016 - 8/31/2016 \$62.07; 9/1/2016 - 10/3/2016 \$65.80; 10/4/2016 - 11/1/2016 \$66.63; 11/2/2016 - 12/1/2016 \$74.80; 12/2/2016 - 1/3/2017 \$81.22; 1/4/2017 - 1/31/2017 \$74.86; 2/1/2017 - 3/2/2017 \$73.01; 3/3/2017 - 3/31/2017 \$34.32; 4/1/2017 - 5/2/2017 \$34.56; 5/3/2017 - 6/1/2017 \$34.32; 6/2/2017 - 6/30/2017 \$34.32	ODLO	Barry Cheung

20170727 #10 Listing of all contracts ... #3.xlsx / ODLO; 10/20

DLNR-LD-012899 2016 \$1.2M Gross

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Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
PO #C70236	08/03/16	\$ 2,669	Pyramid Insurance Centre, Ltd.	Commercial Insurance-Policy# DPP1600120-00, 94-143 Leokane Street, Waipahu, Policy period: June 14, 2016 thru June 14, 2017	ODLO	Barry Cheung
PO #C72764	05/19/17	\$ 2,736	Pyramid Insurance Centre, Ltd.	Commercial Insurance-Policy# DPP1600120-00, 94-143 Leokane Street, Waipahu, Policy period: June 14, 2017 thru June 14, 2018	ODLO	Barry Cheung
PO #C60073	07/02/15	\$ 5,622	Mill Town Center Bus & Ind. Park Assn	Maintenance Fee(s): Maui Land & Pineapple Co., Inc. Lot 1B \$414.63, 2B \$265.36, 3B \$364.87 (LOD S-28514); Aloha Council of the Boys Scouts of America, Lot 24B \$281.95, 25B \$281.95, 26B \$265.36, (LOD S28708) for period: July 1, 2015 thru September 30, 2015	ODLO	Barry Cheung
PO #C61019	10/09/15	\$ 5,622	Mill Town Center Bus & Ind. Park Assn	Maintenance Fee(s): Maui Land & Pineapple Co., Inc. Lot 1B \$414.63, 2B \$265.36, 3B \$364.87 (LOD S-28514); Aloha Council of the Boys Scouts of America, Lot 24B \$281.95, 25B \$281.95, 26B \$265.36, (LOD S28708) for period: October 1, 2015 thru December 31, 2015	ODLO	Barry Cheung
PO #C62778	05/16/16	\$ 10,842	Mill Town Center Bus & Ind. Park Assn	Maintenance Fee(s): Maui Land & Pineapple Co., Inc. Lot 1B \$399.87, 2B \$255.16, 3B \$352.27 (LOD S-28514); Aloha Council of the Boys Scouts of America, Lot 24B \$272.29, 25B \$272.29, 26B \$255.16, (LOD S28708) for period: January 1, 2016 thru June 30, 2016	ODLO	Barry Cheung
PO #C70948	10/25/16	\$ 10,842	Mill Town Center Bus & Ind. Park Assn	Maintenance Fee(s): Maui Land & Pineapple Co., Inc. Lot 1B \$399.87, 2B \$255.16, 3B \$352.27 (LOD S-28514); Aloha Council of the Boys Scouts of America, Lot 24B \$272.29, 25B \$272.29, 26B \$255.16, (LOD S28708) for period: July 1, 2016 thru December 31, 2016	ODLO	Barry Cheung
PO #C71404	01/05/17	\$ 10,537	Mill Town Center Bus & Ind. Park Assn	Maintenance Fee(s): Maui Land & Pineapple Co., Inc. Lot 1B \$388.63, 2B \$247.98, 3B \$342.37 (LOD S-28514); Aloha Council of the Boys Scouts of America, Lot 24B \$264.64, 25B \$264.64, 26B \$247.98, (LOD S28708) for period: January 1, 2017 thru June 30, 2017	ODLO	Barry Cheung
PO #C60558	09/01/15	\$ 64,921	H.T.M. Contractors, Inc.	cut down large banyan tree across 2023 and 2029 Round Top Drive, Honolulu, Hawaii 96822	ODLO	Barry Cheung
PO #C61571	12/29/15	\$ 5,654	Imua Landscaping Co., Inc.	Q16000649: Removal and Trimming of vegetation at Pearl City and Waikiki, TMKs: (1) 9-7-063:086, (1) 2-6-021:113	ODLO	Barry Cheung
PO #C70275	08/10/16	\$ 68,000	Local Landscaping	Q16002239: Removal/Trimming of Overgrown Vegetation at multiple locations on Oahu	ODLO	Barry Cheung

20170727 #10 Listing of all contracts ... #3.xlsx / ODLO; 11/20

DLNR-LD-012900 20170727 #10 Listing of all contracts ... #3.xlsx / ODLO; 11/20

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Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
PO#C60303	7/21/2017	\$ 450.00	HWN TELCOM	Monthly charges for the period July - September 2015. Phone # for (808) 984-8103; (808) 984-8105; (808) 984-8117; (808) 984-8115; (808) 984-8118	MDLO	Daniel Ornellas
PO#C60305	7/21/2015	\$ 600.00	HAWAII PETROLEUM INC	FUEL CHARGES FOR THE MONTHS OF JULY - SEPTEMBER 2015. SPO PRICE LIST CONTRACT NO. 13-14	MDLO	Daniel Ornellas
PO#60472	8/17/2015	\$ 110.46	DEPT OF WATER SUPPLY	WATER CHARGES FOR STATE LAND LOCATED AT WAIKALOA, HANA, MAUI : TMK: (2) 1-3-007:026 FOR THE PERIOD OF 6/2/15-7/27/15. THE WATER CHARGES WERE INCURRED WHILE THE PARCEL WAS UNDR REVOCABLE PERMIT S-6770 TO WILLIM CONNER. THE REVOCALBLE PERMIT WAS CXL ON 5/31/15 DUE TO THE PASSING OF MR. CONNER. TO PREVENT ANY FUTURE UNAUTHORIZED WATER USE, REQUEST TO LOCK THE METER WAS SUBMITTED TO THE MAUI COUNTY DEPT OF WATER SUPPLY BY DISTRICT LAND AGENT DANIEL ORNELLAS.	MDLO	Daniel Ornellas
PO#70524	9/12/2016	\$ 120.00	DEPT OF WATER SUPPLY	ACCT#1192542869-KAMAOLE; ESTIMATED WATER CHARGES-JULY 2016 - DEC 2016	MDLO	Daniel Ornellas
PO#C70522	9/12/2016	\$ 120.00	DEPT OF WATER SUPPLY	ACCT#0280680131-KAMAOLE (KULA SAN) 1/2 METERS: ESTIMATED WATER CHARGES, JULY 2016 - DEC. 2016	MDLO	Daniel Ornellas
PO#C61141	10/29/2015	\$ 750.00	HAWAII PETROLEUM INC	FUEL CHARGES FOR MONTHS OF OCTOBER - DECEMBER 2015. SPO PRICE LIST CONTRACT NO. 13-14	MDLO	Daniel Ornellas
PO#C61142	10/29/2015	\$ 450.00	HWN TELCOM	MONTHLY CHARGES FOR THE PERIODS OF OCTOBER - DECEMBER 2015. ACCT#1009226983000019	MDLO	Daniel Ornellas
PO#C61566	12/24/2015	\$ 18,960.00	USGS	EXPENSED INCURRED UNDER THE JOINT FUNDING AGREEMENT SIGNED 11/20/15 COVERING A PROGRAM THAT INCLUDES 4 DITCHES OPERATED BY THE EAST MAUI IRRIGATION CO. ON THE ISLAND OF MAUI DURING THE PERIOD 10/01/15 THROUGH 9/30/16.	MDLO	Daniel Ornellas
PO#C62034	2/8/2016	\$ 440.00	HWN TELCOM	MONTHLY CHARGES FOR THE MONTHS OF JANUARY -MARCH 2016. ACCT #1009226983000010	MDLO	Daniel Ornellas
PO#C62035	2/8/2016	\$ 700.00	HAWAII PETROLEUM INC	FUEL CHARGES FOR MONTHS OF JANUARY - MARCH 2016. SP PRICE LIST CONTRACT NO. 13-14	MDLO	Daniel Ornellas
PO#C62645	5/2/2016	\$ 600.00	HAWAII PETROLEUM INC	FUEL CHARGES FOR MONTHS OF APRIL - JUNE 2016. SPO PRICE LIST CONTRACT NO. 13-14.	MDLO	Daniel Ornellas
PO#C62646	5/2/2016	\$ 440.00	HWN TELCOM	MONTHLY CHARGES FOR THE PERIOD OF APRIL - JUNE 2016. ACCT#1009226983000010	MDLO	Daniel Ornellas
PO#C72154	3/15/2017	\$ 19,520.00	USGS	JOINT FUNDING AGREEMENT FOR A PROGRAM TO ACQUIRE STREAM FLOW DATA FROM SELECTED STATIONS ON THE ISLAND OF MAUI FROM OCTOBER 1, 2016 THROUGH SEPTEMBER 30, 2017. (FOR HONOPOU STREMS - WAILOA DITCH, NEW HAMAKIA DITCH, LOWRIE DITCH & HAIKU DITCH.	MDLO	Daniel Ornellas
PO#C71707	1/23/2017	\$ 30.00	AT&T	STANDING PO FOR JAN - JUNE 2017; ESTIMATED LONG DISTANCE CHARGES; ACCT#1001-175-3520; SPO PRICE LIST CONTRACT NO. 12-10; VENDOR DOES NOT ACCEPT PCARD.	MDLO	Daniel Ornellas
PO#C71704	1/23/2017	\$ 1,200.00	HAWAII PETROLEUM INC	FUEL CHARGES FOR THE MONTHS OF JAN - JUNE 2017. SPO PRICE LIST CONTRACT NO. 13-14.	MDLO	Daniel Ornellas
PO#C80018	7/5/2017	\$ 30.00	AT&T	ESTIMATED LONG DISTANCE CHARGES FOR JULY - DECEMBER 2017. ACCT#1001-176-3520; VENDOR DOES NOT ACCEPT PCARD	MDLO	Daniel Ornellas
PO#C80019	7/5/2017	\$ 1,200.00	HAWAII PETROLEUM INC	FUEL CHARGES FOR THE MONTHS OF JULY- DECEMBER 2017. SPO PRICE LIST CONTRACT NO. 13-14.	MDLO	Daniel Ornellas
JOURNAL VOUCHER ENTRY DEBIT: 01-621-S-16-318-C-5501-0540-000000-00-050	7/1/2015	\$ 180.00	DAGS: AUTOMOTIVE MNGMT DIV	QUARTERLY CHARGES FOR THE RENTAL OF PARKING STALL(S): JULY 1 2015 - SEPT 2015; SH-E603. 2011 TOYOTA TACOMA, SH-E581, 2011 TOYOTA TACOMA; XC-036-\$90.00, XC-030-\$90.00; 2 VEHICLE(S) STALL RENTAL @ 30.00.	MDLO	Daniel Ornellas

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JOURNAL VOUCHER ENTRY DEBIT: 01- 621-S-16-318-C-5501- 0540-000000-00-050	10/1/2015	\$ 180.00	DAGS: AUTOMOTIVE MNGMT DIV	QUARTERLY CHARGES FOR THE RENTAL OF PARKING STALL(S): OCT 1- DEC 31, 2015; SH-E603, 2011 TOYOTA TACOMA & SH-E581, 2011 TOYOTA TACOMA; XC-036-\$90.00 & XC-030-\$90.00. 2 VEHICLE(S) STALL RENTAL @ 30.00.	MDLO	Daniel Ornellas
JOURNAL VOUCHER ENTRY DEBIT: 01- 621-S-16-318-C-5501- 0540-000000-00-050	1/4/2016	\$ 180.00	DAGS: AUTOMOTIVE MNGMT DIV	QUARTERLY CHARGES FOR THE RENTAL OF PARKING STALL(S): JAN 1 2016 - MARCH 31 2016; 2 VEHICLE(S) STALL RENTAL @ 30.00; SH-E603 & SH-E581 2011 TOYOTA TACOMA; XC-036-\$90.00; XC-030-\$90.00	MDLO	Daniel Ornellas
JOURNAL VOUCHER ENTRY DEBIT: 01- 621-S-16-318-C-5501- 0540-000000-00-050	4/1/2016	\$ 180.00	DAGS: AUTOMOTIVE MNGMT DIV	QUARTERLY CHARGES FOR THE RENTAL OF PARKING STALL(S): APRIL 1, 2016 - JUNE 30, 2016; 2 VEHICLE(S) STALL RENTAL @ 30.00; SH-E603 & SH- E581; 2011 TOYOTA TACOMA; XC-036-\$90.00; XC-030-\$90.00	MDLO	Daniel Ornellas
JOURNAL VOUCHER ENTRY DEBIT: 01- 621-S-17-318-C-5501- 0540-000000-00-050	7/1/2016	\$ 180.00	DAGS: AUTOMOTIVE MNGMT DIV	QUARTERLY CHARGES FOR THE RENTAL OF PARKING STALL(S): JULY 1, 2016 - SEPT 30, 2016; 2 VEHICLE(S) STALL RENTAL @ 30.00; SH-E603 & SH- E581 TOYOTA TACOMA; XC-036-\$90.00; XC-030-\$90.00.	MDLO	Daniel Ornellas
JOURNAL VOUCHER ENTRY DEBIT: 01- 621-S-15-318-C-5501- 0540-000000-00-050	10/3/2016	\$ 180.00	DAGS: AUTOMOTIVE MNGMT DIV	QUARTERLY CHARGES FOR THE RENTAL OF PARKING STALL(S): OCT 1, 2016 - DEC 31, 2016; 2 VEHICLE(S) STALL RENTAL @30.00; SH-E603 & SH- E581 TOYOTA TACOMA; XC-036-\$90.00 & XC-030-\$90.00	MDLO	Daniel Ornellas
JOURNAL VOUCHER ENTRY DEBIT: 01- 621-S-17-318-C-5501- 0540-000000-00-050	1/3/2017	\$ 180.00	DAGS: AUTOMOTIVE MNGMT DIV	QUARTERLY CHARGES FOR THE RENTAL OF PARKING STALL(S): JAN 01, 2017 - MARCH 31, 2017; 2 VEHICLE(S) STALL RENTAL @ 30.00; SH-E603 & SH- E581 TOYOTA TACOMA; XC-036-\$90.00 & XC-030-\$90.00	MDLO	Daniel Ornellas
JOURNAL VOUCHER ENTRY DEBIT: 01- 621-S-17-318-C-5501- 0540-000000-00-050	4/3/2017	\$ 180.00	DAGS: AUTOMOTIVE MNGMT DIV	QUARTERLY CHARGES FOR THE RENTAL OF PARKING STALL(S): APRIL 1, 2017 - JUNE 30, 2017; 2 VEHICLE(S) STALL RENTAL @ 30.00; SH-E603 & SH- E581 TOYOTA TACOMA; XC-036-\$90.00 & XC-030-\$90.00.	MDLO	Daniel Ornellas
JOURNAL VOUCHER ENTRY DEBIT: 01- 621-S-17-318-C-5501- 0540-000000-00-050	7/3/2017	\$ 180.00	DAGS: AUTOMOTIVE MNGMT DIV	QUARTERLY CHARGES FOR THE RENTAL OF PARKING STALL(S): JULY 1, 2017 - SEPTEMBER 30, 2017; 2 VEHICLE(S) STALL RENTAL @ 30.00; SH- E603 & SH-E581 TOYOTA TACOMA; XC-036-\$90.00 & XC-030-\$90.00.	MDLO	Daniel Ornellas

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Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
C70716	10/06/16	\$ 30,000	Onyx	Consultation services for the planning of the PLTIS version and training new IT staff to update the systems and data.	Land	Quoc Li/ Ian Hirokawa
C72678	05/04/17	\$ 97,382	Onyx	Professional services to develop and deploy a public version of the PLTIS that mirrors the existing production version and incorporates the latest version of OS, SQL Server, GIS and development components.	Land	Quoc Li/ Ian Hirokawa
C72641	04/28/17	\$ 2,513	OceanIT	Assist with migration of backup dataset to another Oracle DB.	Land	Quoc Li/ Ian Hirokawa
64652	04/15/16	\$ 75,000	OceanIT	Consultant services to assist in the procurement of a vendor and contract management regarding the implementation of a replacement land management information system.	Land	Quoc Li/ Ian Hirokawa
65745	06/23/17	\$ 1,282,650	Yardi	Replacement land management information system.	Land	Quoc Li/ Ian Hirokawa

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Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
PO# C73169	Feb.-Mar., 2017	\$8,593.75	Hulapalooza	VENUE AT (Crown Room) of Grand Nanihoa Hotel from	OCCL	S. Michael Cain
PO# C73119	Dec., 2016 - 1/31/17	\$15,625.00	Hulapalooza	VENUE AT (Crown Room) of Grand Nanihoa Hotel from	OCCL	S. Michael Cain
PO# C73118	Oct. 3-31, 2017	\$12,500.00	Hulapalooza	VENUE AT (Crown Room) of Grand Nanihoa Hotel from	OCCL	S. Michael Cain
P-Card Trans. In Aug	Log # 288 on 8/5/2016	\$350.00	Island of Hawaii YMCA	Public Hearing Held on 8/12/16 at Different Location	OCCL	Sam Lemmo
P-Card Trans. In Jul.	Log # 272 on 6/28/16	\$550 w/deposit	Island of Hawaii YMCA	Public Hearing Held on 8/5/16	OCCL	Sam Lemmo
<b>COURT REPORTERS</b>						
PO# C72683	Aug., 2016 - Mar., 2017	\$87,170.90	Momanus Court Reporters	Transcripts for 30m TMT Contested Case BLNR CC 16-002	OCCL	Sam Lemmo
PO# C72400	Jan. 19, 2017	\$2,139.27	Ralph Rosenberg Court Rptrs., Inc.	Transcripts for 30m TMT Contested Case BLNR CC 16-002	OCCL	Sam Lemmo
PO# C72399	Jan. 31, 2017	\$2,061.78	Ralph Rosenberg Court Rptrs., Inc.	Transcripts for 30m TMT Contested Case BLNR CC 16-002	OCCL	Sam Lemmo
PO# C72348	Jan. 23, 2017	\$2,025.13	Ralph Rosenberg Court Rptrs., Inc.	Transcripts for 30m TMT Contested Case BLNR CC 16-002	OCCL	Sam Lemmo
PO# C72035	Nov. 15-16, 2016	\$4,203.09	Island Court Reporting & Trans. Svcs	Transcripts for 30m TMT Contested Case BLNR CC 16-002	OCCL	Sam Lemmo
		\$97,600.17				
<b>PER DIEM</b>						
PO# C72640	4/28/2017	\$23.00	S. Michael Cain	Deliver Transcript to Kona/Hilo Libraries on 4/18/17	OCCL	Sam Lemmo
PO# C72401	4/3/2017	\$727.16	Julie China	Feb. 27-Mar. 2 Per diem	OCCL	Sam Lemmo
PO# C72402	4/3/2017	\$215.99	William Wynhoff	Jan.11-12, '17 Per diem	OCCL	Sam Lemmo
PO# C72403	4/3/2017	\$331.49	William Wynhoff	Feb. 21-23, '17 Per diem	OCCL	Sam Lemmo
PO# C72404	4/3/2017	\$664.55	Julie China	Feb. 13-16, '17 Per diem	OCCL	Sam Lemmo
PO# C72405	4/3/2017	\$147.10	Donna Kalama	Feb. 28, '17 Per diem	OCCL	Sam Lemmo
PO# C72227	3/20/2017	\$575.07	Alex J. Roy	Feb. 27-Mar. 2, '17 Per diem	OCCL	Sam Lemmo
PO# C72204	3/17/2017	\$38.00	Donna Kalama	Feb. 27, '17 Per diem	OCCL	Sam Lemmo
PO# C72203	3/17/2017	\$256.83	S. Michael Cain	Feb. 21-23, '17 Per diem	OCCL	Sam Lemmo
PO# C72141	3/10/2017	\$425.49	Julie China	Jan. 23-25, '17 Per diem	OCCL	Sam Lemmo
PO# C72140	3/10/2017	\$376.82	S. Michael Cain	Feb. 13-16, '17 Per diem	OCCL	Sam Lemmo
PO# C72137	3/10/2017	\$258.85	S. Lemmo	Feb. 27-28 Per diem	OCCL	Sam Lemmo
PO# C72047	3/1/2017	\$286.25	S. Michael Cain	Jan. 23-26 Per diem	OCCL	Sam Lemmo
PO# C72045	3/1/2017	\$45.49	William Wynhoff	Jan. 31, 2017 Per diem	OCCL	Sam Lemmo
PO# C72044	3/1/2017	\$60.89	William Wynhoff	Jan. 30, 2017 Per diem	OCCL	Sam Lemmo
PO# C72043	3/1/2017	\$27.49	Julie China	Jan.19, 2017 Per diem	OCCL	Sam Lemmo
PO# C72042	3/1/2017	\$27.49	Julie China	Jan.10, 2017 Per diem	OCCL	Sam Lemmo
PO# C72041	3/1/2017	\$20.00	Linda Chow	Jan.26, 2017 Per diem	OCCL	Sam Lemmo
PO# C72040	3/1/2017	\$25.00	Alex J. Roy	Jan.19, 2017 Per diem	OCCL	Sam Lemmo
PO# C71961	15-Feb	\$270.00	S. Michael Cain	Feb. 21-23, '17 Per diem	OCCL	Sam Lemmo
PO# C71941	14-Feb	\$45.49	William Wynhoff	Jan.9, 2017 Per diem	OCCL	Sam Lemmo
PO# C71940	14-Feb	\$180.00	Alex J. Roy	Feb. 27-28, '17 Per diem	OCCL	Sam Lemmo
PO# C71870	7-Feb	\$20.00	S. Michael Cain	Dec. 8, 2016 Per diem	OCCL	Sam Lemmo
PO# C71869	7-Feb	\$360.00	S. Michael Cain	Feb. 13-16, '17 Per diem	OCCL	Sam Lemmo
PO# C71736	1/23/2017	\$491.88	S. Michael Cain	Jan.3-5, 2017 Per diem	OCCL	Sam Lemmo
PO# C71735	1/23/2017	\$682.34	Alex J. Roy	Jan.9-12 Per diem	OCCL	Sam Lemmo
PO# C71734	1/23/2017	\$27.49	Julie China	Jan.3, 2017 Per diem	OCCL	Sam Lemmo
PO# C71733	1/23/2017	\$27.49	Julie China	Jan. 5, 2017 Per diem	OCCL	Sam Lemmo
PO# C71732	1/23/2017	\$31.65	Julie China	Jan. 4, 2017 Per diem	OCCL	Sam Lemmo
PO# C71731	1/23/2017	\$288.01	Alex J. Roy	Jan. 30-31, 2017 Per diem	OCCL	Sam Lemmo
PO# C71646	1/12/2017	\$264.97	S. Michael Cain	Dec. 19-20, 2016 Per diem	OCCL	Sam Lemmo
PO# C71645	1/12/2017	\$20.00	S. Michael Cain	Dec. 16, 2016 Per diem	OCCL	Sam Lemmo
PO# C71644	1/12/2017	\$267.16	S. Michael Cain	Dec. 12-13, 2016 Per diem	OCCL	Sam Lemmo
PO# C71643	1/12/2017	\$27.56	Julie China	Dec. 19, 2016 Per diem	OCCL	Sam Lemmo
PO# C71642	1/12/2017	\$27.56	Julie China	Dec. 16, 2016 Per diem	OCCL	Sam Lemmo
PO# C71641	1/12/2017	\$27.56	Julie China	Dec. 6, 2016 Per diem	OCCL	Sam Lemmo
PO# C71640	1/12/2017	\$27.56	Julie China	Dec. 5, 2016 Per diem	OCCL	Sam Lemmo
PO# C71639	1/12/2017	\$27.56	Julie China	Dec. 2, 2016 Per diem	OCCL	Sam Lemmo
PO# C71638	1/12/2017	\$27.56	Julie China	Dec. 1, 2016 Per diem	OCCL	Sam Lemmo
PO# C71636	1/12/2017	\$347.72	Alex J. Roy	Dec. 1-2, 2016 Per diem	OCCL	Sam Lemmo
PO# C71635	1/12/2017	\$328.68	William Wynhoff	Dec. 20, 2016 Per diem	OCCL	Sam Lemmo
PO# C71634	1/12/2017	\$223.56	William Wynhoff	Dec. 12-13, 2016 Per diem	OCCL	Sam Lemmo

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Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
PO# C71633	1/12/2017	\$45.56	William Wynnhoff	Dec. 8, 2016 Per diem	OCCL	Sam Lemmo
PO# C71632	1/12/2017	\$286.30	S. Lemmo	Dec. 5-6, 2016 Per diem	OCCL	Sam Lemmo
PO# C71631	1/12/2017	\$360.00	S. Michael Cain	Jan. 23-26 Per diem	OCCL	Sam Lemmo
PO# C71500	1/6/2017	\$298.99	S. Lemmo	Nov. 15-16, 2016 Per diem	OCCL	Sam Lemmo
PO# C71499	1/6/2017	\$58.73	S. Michael Cain	Nov. 2, 2016 Per diem	OCCL	Sam Lemmo
PO# C71498	1/6/2017	\$27.56	Julie China	Nov. 16, 2016 Per diem	OCCL	Sam Lemmo
PO# C71497	1/6/2017	\$27.56	Julie China	Nov. 15, 2016 Per diem	OCCL	Sam Lemmo
PO# C71496	1/6/2017	\$27.56	Julie China	Nov. 2, 2016 Per diem	OCCL	Sam Lemmo
PO# C71492	1/6/2017	\$84.66	William Wynnhoff	Oct. 31, 2016 Per diem	OCCL	Sam Lemmo
PO# C71491	1/6/2017	\$354.06	William Wynnhoff	Oct. 25-28, 2016 Per diem	OCCL	Sam Lemmo
PO# C71490	1/6/2017	\$35.45	S. Michael Cain	Oct. 31, 2016 Per diem	OCCL	Sam Lemmo
PO# C71489	1/6/2017	\$295.40	S. Michael Cain	Oct. 17-19, 2016 Per diem	OCCL	Sam Lemmo
PO# C71488	1/6/2017	\$27.56	Julie China	Oct. 24, 2016 Per diem	OCCL	Sam Lemmo
PO# C71487	1/6/2017	\$27.56	Julie China	Oct. 20, 2016 Per diem	OCCL	Sam Lemmo
PO# C71486	1/6/2017	\$27.56	Julie China	Oct. 17, 2016 Per diem	OCCL	Sam Lemmo
PO# C71194	11/18/2016	\$20.00	S. Michael Cain	Oct. 20, 2016 Per diem	OCCL	Sam Lemmo
PO# C71192	11/18/2016	\$650.92	S. Michael Cain	Oct. 24-28, 2016 Per diem	OCCL	Sam Lemmo
PO# C71191	11/18/2016	\$304.32	S. Michael Cain	Oct. 3-5, 2016 Per diem	OCCL	Sam Lemmo
PO# C71190	11/18/2016	\$279.45	S. Michael Cain	Sept. 25-26, 2016 Per diem	OCCL	Sam Lemmo
PO# C71124	11/4/2016	\$143.06	William Wynnhoff	Sept. 25-26, 2016 Per diem	OCCL	Sam Lemmo
PO# C71062	11/2/2016	\$27.56	Julie China	Oct. 3, 2016 Per diem	OCCL	Sam Lemmo
PO# C70952	10/25/2016	\$27.56	Julie China	Aug. 29, 2016 Per diem	OCCL	Sam Lemmo
PO# C70444	8/29/2016	\$45.56	William Wynnhoff	Aug. 5, 2016 Per diem	OCCL	Sam Lemmo
PO# C70441	8/29/2016	\$27.56	Julie China	Aug. 12, 2016 Per diem	OCCL	Sam Lemmo
PO# C70387	8/23/2016	\$20.00	S. Michael Cain	Aug. 5, 2016 Per diem	OCCL	Sam Lemmo
PO# C70386	8/23/2016	\$27.56	Julie China	Aug. 5, 2016 Per diem	OCCL	Sam Lemmo
PO# C70176	8/1/2016	\$45.56	William Wynnhoff	Jun. 17, 2016 Per diem	OCCL	Sam Lemmo
PO# C63426	6/30/2016	\$20.00	Julie China	Jun. 17, 2016 Per diem	OCCL	Sam Lemmo
PO# C63361	6/23/2016	\$38.00	S. Michael Cain	Jun. 17, 2016 Per diem	OCCL	Sam Lemmo
		total	\$12,234.38			
<b>P-Card Trans.#</b>				<b>DATE OF CAR RENTAL</b>		
Log #452 in May	4/11/2017	\$101.51	S. Michael Cain	APR. 18, 2017	OCCL	Sam Lemmo
Log #425 in Mar.	8-Feb	\$204.00	S. Michael Cain	Feb. 13-16, '17	OCCL	Sam Lemmo
Log #433 in Mar.	8-Feb	\$153.00	S. Michael Cain	Feb. 21-23, '17	OCCL	Sam Lemmo
Log #438 in Mar.	24-Feb	\$204.00	Alex J. Roy	Feb. 27-Mar. 2	OCCL	Sam Lemmo
Log #412 in Feb.	12/20/2016	\$51.00	Alex J. Roy	Jan. 19, 2017	OCCL	Sam Lemmo
Log #417 in Feb.	12/20/2016	\$204.00	S. Michael Cain	Jan. 23-26	OCCL	Sam Lemmo
Log #419 in Feb.	12/20/2016	\$102.00	Alex J. Roy	Jan. 30-31, 2017	OCCL	Sam Lemmo
Log #056 in Feb.	12/20/2016	\$204.00	Alex J. Roy	Jan. 9-12, '17	OCCL	Sam Lemmo
Log #381 in Jan.	11/10/2016	\$102.00	S. Michael Cain	Dec. 12-13, 2016	OCCL	Sam Lemmo
Log #382 in Jan.	11/9/2016	\$51.00	S. Michael Cain	Dec. 16, 2016	OCCL	Sam Lemmo
Log #404 in Jan.	11/10/2016	\$102.00	S. Michael Cain	Dec. 19-20, 2016	OCCL	Sam Lemmo
Log #407 in Jan.	12/20/2016	\$153.00	S. Michael Cain	Jan. 3-5, 2017	OCCL	Sam Lemmo
Log #368 in Dec.	11/10/2016	\$102.00	S. Lemmo	Nov. 15-16, 2016	OCCL	Sam Lemmo
Log #374 in Dec.	11/9/2016	\$102.00	Alex J. Roy	Dec. 1-2, 2016	OCCL	Sam Lemmo
Log #376 in Dec.	11/10/2016	\$102.00	S. Lemmo	Dec. 5-6, 2016	OCCL	Sam Lemmo
Log #378 in Dec.	11/10/2016	\$51.00	S. Michael Cain	Dec. 8, 2016	OCCL	Sam Lemmo
Log #342 in Nov.	10/14/2016	\$103.00	S. Michael Cain	Oct. 17-19, 2016	OCCL	Sam Lemmo
Log #350 in Nov.	10/19/2016	\$51.50	S. Michael Cain	Oct. 20, 2016	OCCL	Sam Lemmo
Log #358 in Nov.	10/24/2016	\$206.00	S. Michael Cain	Oct. 24-28, 2016	OCCL	Sam Lemmo
Log #359 in Nov.	10/27/2016	\$51.50	S. Michael Cain	Oct. 31, 2016	OCCL	Sam Lemmo
Log #362 in Nov.	10/27/2016	\$51.00	S. Michael Cain	Nov. 2, 2016	OCCL	Sam Lemmo
Log #310 in Oct.	9/28/2016	\$51.50	S. Michael Cain	SEPT. 25 & 26, 2016	OCCL	Sam Lemmo
Log #323 in Oct.	9/30/2016	\$102.00	S. Michael Cain	Oct. 3-4, 2016	OCCL	Sam Lemmo

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Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
		\$2,605.01			OCCL	Sam Lemmo
<b>P-Card Trans.#</b>	<b>Date</b>			<b>AIRLINE TRAVEL DATE</b>	OCCL	Sam Lemmo
Log #445 in Apr.	4/11/2017	\$99.10	S. Michael Cain	Delivery of DOCS. To Kona Libraries on Apr. 18, 2017	OCCL	Sam Lemmo
Log #446 in Apr.	4/11/2017	\$99.10	S. Michael Cain	Delivery of DOCS. To Hilo Libraries on Apr. 18, 2017	OCCL	Sam Lemmo
Log #431 in Mar.	2/23/2017	\$212.70	S. Lemmo	Feb. 27, 2017	OCCL	Sam Lemmo
Log #432 in Mar.	2/23/2017	\$212.70	Donna Kalama	Feb. 27, 2017	OCCL	Sam Lemmo
Log #435 in Mar.	2/23/2017	\$5.60	S. Lemmo-Change Fee ONLY	Feb. 27-28, '17	OCCL	Sam Lemmo
Log #435 in Mar.	2/23/2017	\$104.10	Donna Kalama	Feb. 28, '17 (ONE-WAY ONLY; RETURN TRIP AIRFARE WAS R	OCCL	Sam Lemmo
Log #070 in Mar.	2/8/2017	CREDIT \$192.60	Julie China	Jan. 26, 2017	OCCL	Sam Lemmo
Log #071 in Mar.	3/6/2017	\$10.01	Alex J. Roy	Feb. 27-Mar. 2 (1st Flight Time Change Fee)	OCCL	Sam Lemmo
Log #072 in Mar.	3/6/2017	\$5.60	Julie China	Feb. 27-Mar. 2 (2nd Flight Time Change Fee)	OCCL	Sam Lemmo
Log #073 in Mar.	3/6/2017	\$15.10	Jean McManus	Feb. 27-Mar. 2 (Flight Time Change Fee)	OCCL	Sam Lemmo
Log #074 in Mar.	3/6/2017	\$30.10	Alex J. Roy	Feb. 27-Mar. 2 (2nd Flight Time Change Fee)	OCCL	Sam Lemmo
Log #057 in Feb.	1/18/2017	\$238.30	William Wynhoff	Jan. 31- Feb 1, 2017	OCCL	Sam Lemmo
Log #059 in Feb.	1/18/2017	\$34.50	William Wynhoff	Jan. 31- Feb 1, 2017 (Return Flight Change Fee)	OCCL	Sam Lemmo
Log #060 in Feb.	1/31/2017	\$253.20	Julie China	Feb. 13-16, '17	OCCL	Sam Lemmo
Log #061 in Feb.	1/31/2017	\$278.40	Jean McManus	Feb. 13-16, '17	OCCL	Sam Lemmo
Log #062 in Feb.	2/8/2017	\$228.40	Jean McManus	Feb. 21-23, '17	OCCL	Sam Lemmo
Log #063 in Feb.	2/8/2017	\$253.40	S. Michael Cain	Feb. 21-23, '17	OCCL	Sam Lemmo
Log #064 in Feb.	2/8/2017	\$253.40	William Wynhoff	Feb. 21-23, '17	OCCL	Sam Lemmo
Log #065 in Feb.	2/8/2017	\$213.30	Julie China	Feb. 27-28, '17	OCCL	Sam Lemmo
Log #066 in Feb.	2/8/2017	\$213.30	Jean McManus	Feb. 27-28, '17	OCCL	Sam Lemmo
Log #067 in Feb.	2/8/2017	\$198.19	Alex J. Roy	Feb. 27-28, '17	OCCL	Sam Lemmo
Log #068 in Feb.	2/8/2017	\$4.41	Julie China	Feb. 27-28, '17 (1st Change of Date FEE to 2/27/16)	OCCL	Sam Lemmo
Log #069 in Feb.	2/8/2017	\$192.60	Julie China	Feb. 28, '17	OCCL	Sam Lemmo
Log #385 in Jan.	12/20/2016	\$247.60	Julie China	Jan.19, 2017	OCCL	Sam Lemmo
Log #386 in Jan.	12/20/2016	\$247.60	Julie China	Jan.4, 2017	OCCL	Sam Lemmo
Log #387 in Jan.	12/20/2016	\$247.60	Julie China	Jan. 3, 2017	OCCL	Sam Lemmo
Log #388 in Jan.	12/20/2016	\$242.51	Julie China	Jan. 24, 2017	OCCL	Sam Lemmo
Log #389 in Jan.	12/20/2016	\$247.60	Julie China	Jan. 25, 2017	OCCL	Sam Lemmo
Log #390 in Jan.	12/20/2016	\$247.60	Julie China	Jan. 23, 2017	OCCL	Sam Lemmo
Log #391 in Jan.	12/20/2016	\$247.60	Julie China	Jan. 10, 2017	OCCL	Sam Lemmo
Log #392 in Jan.	12/20/2016	\$377.51	Julie China	Jan. 5, 2017	OCCL	Sam Lemmo
Log #393 in Jan.	12/20/2016	\$217.51	Jean McManus	Jan. 20, 2017	OCCL	Sam Lemmo
Log #394 in Jan.	12/20/2016	\$248.11	Alex J. Roy	Jan.9-12, '17	OCCL	Sam Lemmo
Log #395 in Jan.	12/20/2016	\$278.20	Jean McManus	Jan.9-11, '17	OCCL	Sam Lemmo
Log #396 in Jan.	12/20/2016	\$253.20	S. Michael Cain	Jan. 23-26, 2017	OCCL	Sam Lemmo
Log #397 in Jan.	12/20/2016	\$248.11	Jean McManus	Jan. 24-26, 2017	OCCL	Sam Lemmo
Log #398 in Jan.	12/20/2016	\$247.60	Linda Chow	Jan. 26, 2017	OCCL	Sam Lemmo
Log #399 in Jan.	12/20/2016	\$253.20	Alex J. Roy	Jan. 30-31, 2017	OCCL	Sam Lemmo
Log #400 in Jan.	12/20/2016	\$247.60	Alex J. Roy	Jan.19, 2017	OCCL	Sam Lemmo
Log #401 in Jan.	12/20/2016	\$217.51	Jean McManus	Jan. 20, 2017	OCCL	Sam Lemmo
Log #402 in Jan.	12/20/2016	\$5.60	Jean McManus	Dec. 20, 2016 (One-Way w/Free Haw'n. Miles)	OCCL	Sam Lemmo
Log #403 in Jan.	12/20/2016	\$5.60	Jean McManus	Dec. 20, 2016 (Return Trip w/Free Haw'n. Miles)	OCCL	Sam Lemmo
Log #409 in Jan.	12/20/2016	CREDIT \$242.51	Julie China	Jan. 24, '17 (Credit Refund for Cancelled Trip)	OCCL	Sam Lemmo
Log #410 in Jan.	12/20/2016	CREDIT \$247.60	Julie China	Jan. 23, '17 (Credit Refund for Cancelled Trip)	OCCL	Sam Lemmo
Log #044 in Jan.	11/9/2016	\$14.90	William Wynhoff	Dec. 20, 2016 (Flight Time Change Fee)	OCCL	Sam Lemmo
Log #045 in Jan.	12/20/2016	\$253.20	Jean McManus	Jan. 30-31, 2017	OCCL	Sam Lemmo
Log #046 in Jan.	12/20/2016	\$253.20	William Wynhoff	Jan. 30-31, 2017	OCCL	Sam Lemmo
Log #047 in Jan.	12/20/2016	\$247.60	William Wynhoff	Jan. 9, '17	OCCL	Sam Lemmo
Log #048 in Jan.	12/20/2016	\$253.20	S. Michael Cain	Jan. 3-5, 2017	OCCL	Sam Lemmo
Log #049 in Jan.	12/20/2016	\$248.11	William Wynhoff	Jan.11-12, '17	OCCL	Sam Lemmo
Log #050 in Jan.	12/20/2016	\$278.20	Jean McManus	Jan. 3-5, 2017	OCCL	Sam Lemmo
Log #052 in Jan.	12/20/2016	\$30.80	Julie China	Jan. 25, 2017 (Flight Time Change Fee)	OCCL	Sam Lemmo

20170727 #10 Listing of all contracts ... #3.xlsx / TMT; 17/20

DLNR-LD-012906

# APPENDICES

Revised 7/31/2017

Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
Log #025 in Dec.	11/9/2016	CREDIT \$228.4	Kimberly Mills	Nov. 18, '16 (Credit Refund for Cancelled Trip)	OCCL	Sam Lemmo
Log #026 in Dec.	11/9/2016	CREDIT \$242.6	S. Michael Cain	Dec. 16, '16 (Credit Refund for Cancelled Trip)	OCCL	Sam Lemmo
Log #027 in Dec.	11/9/2016	CREDIT \$240.5	Julie China	Dec. 16, '16 (Credit Refund for Cancelled Trip)	OCCL	Sam Lemmo
Log #028 in Dec.	11/9/2016	CREDIT \$240.5	Jean McManus	Dec. 16, '16 (Credit Refund for Cancelled Trip)	OCCL	Sam Lemmo
Log #029 in Dec.	11/9/2016	CREDIT \$242.6	Julie China	Nov. 18, '16 (Credit Refund for Cancelled Trip)	OCCL	Sam Lemmo
Log #030 in Dec.	11/9/2016	CREDIT \$242.6	Jean McManus	Nov. 18, '16 (Credit Refund for Cancelled Trip)	OCCL	Sam Lemmo
Log #031 in Dec.	11/9/2016	\$248.20	Alex J. Roy	Dec. 1-2, 2016	OCCL	Sam Lemmo
Log #032 in Dec.	11/18/2016	\$242.60	S. Michael Cain	Dec. 8, 2016	OCCL	Sam Lemmo
Log #033 in Dec.	11/18/2016	\$242.60	William Wynnhoff	Dec. 8, 2016	OCCL	Sam Lemmo
Log #034 in Dec.	11/18/2016	\$242.60	Jean McManus	Dec. 8, 2016	OCCL	Sam Lemmo
Log #035 in Dec.	11/18/2016	\$240.50	Jean McManus	Dec. 16, 2016	OCCL	Sam Lemmo
Log #036 in Dec.	11/9/2016	\$240.50	Julie China	Dec. 16, 2016	OCCL	Sam Lemmo
Log #037 in Dec.	11/9/2016	\$242.60	S. Michael Cain	Dec. 16, 2016	OCCL	Sam Lemmo
Log #038 in Dec.	11/9/2016	\$222.60	William Wynnhoff	Dec. 20, 2016	OCCL	Sam Lemmo
Log #039 in Dec.	11/9/2016	\$228.20	S. Michael Cain	Dec. 19-20, 2016	OCCL	Sam Lemmo
Log #040 in Dec.	11/9/2016	\$228.20	Jean McManus	Dec. 19-20, 2016	OCCL	Sam Lemmo
Log #041 in Dec.	11/18/2016	\$228.20	S. Michael Cain	Dec. 12-13, 2016	OCCL	Sam Lemmo
Log #042 in Dec.	11/18/2016	\$228.20	Jean McManus	Dec. 12-13, 2016	OCCL	Sam Lemmo
Log #043 in Dec.	11/18/2016	\$228.20	William Wynnhoff	Dec. 12-13, 2016	OCCL	Sam Lemmo
Log #336 in Nov.	10/17/2016	\$176.40	Julie China	Oct. 18, 2016	OCCL	Sam Lemmo
Log #337 in Nov.	10/17/2016	\$176.40	William Wynnhoff	Oct. 18, 2016	OCCL	Sam Lemmo
Log #338 in Nov.	10/19/2016	\$223.49	Julie China	Oct. 20, 2016	OCCL	Sam Lemmo
Log #339 in Nov.	10/19/2016	\$41.49	Jean McManus	Oct. 20, '16 (Change of Date FEE to 10/18-20/16)	OCCL	Sam Lemmo
Log #340 in Nov.	10/19/2016	\$223.49	S. Michael Cain	Oct. 20, 2016	OCCL	Sam Lemmo
Log #341 in Nov.	10/17/2016	\$39.10	S. Michael Cain	Oct. 17-19, '16 (FEE for Change of Date to 10/18-20/16)	OCCL	Sam Lemmo
Log #343 in Nov.	10/21/2016	\$203.50	Jean McManus	Oct. 25, 2016	OCCL	Sam Lemmo
Log #344 in Nov.	10/21/2016	\$195.50	S. Michael Cain	Oct. 24, 2016	OCCL	Sam Lemmo
Log #345 in Nov.	10/21/2016	\$195.50	Julie China	Oct. 24, 2016	OCCL	Sam Lemmo
Log #346 in Nov.	10/21/2016	\$195.50	Jean McManus	Oct. 24, 2016	OCCL	Sam Lemmo
Log #347 in Nov.	10/24/2016	\$222.60	Jean McManus	Oct. 26, 2016	OCCL	Sam Lemmo
Log #348 in Nov.	10/24/2016	\$235.49	Jean McManus	Oct. 27, 2016	OCCL	Sam Lemmo
Log #349 in Nov.	10/24/2016	\$248.20	William Wynnhoff	Oct. 25-28, 2016	OCCL	Sam Lemmo
Log #351 in Nov.	10/24/2016	\$13.60	S. Michael Cain	Oct. 24-27, 2016 ( Flight Time Change Fee)	OCCL	Sam Lemmo
Log #353 in Nov.	10/27/2016	\$208.39	Jean McManus	Oct. 31, 2016	OCCL	Sam Lemmo
Log #354 in Nov.	10/27/2016	\$168.40	S. Michael Cain	Nov. 2, 2016	OCCL	Sam Lemmo
Log #355 in Nov.	10/27/2016	\$168.40	Jean McManus	Nov. 2, 2016	OCCL	Sam Lemmo
Log #357 in Nov.	10/31/2016	\$188.40	Samuel Lemmo	Nov. 2, 2016 (Rescheduled Flt. To Nov. 15, 2016)	OCCL	Sam Lemmo
Log #360 in Nov.	10/31/2016	\$54.20	Samuel Lemmo	NOV. 2, '16 (FEE for 1st Change of Date to 11/15/16)	OCCL	Sam Lemmo
Log #366 in Nov.	10/31/2016	\$5.60	Samuel Lemmo	NOV. 2, '16 (FEE for 2nd Change of Date to 11/15-16/16)	OCCL	Sam Lemmo
Log #007 in Nov.	11/9/2016	\$228.49	Kimberly Mills	Nov. 18, '16	OCCL	Sam Lemmo
Log #008 in Nov.	11/9/2016	\$242.60	S. Michael Cain	Dec. 16, 2016	OCCL	Sam Lemmo
Log #009 in Nov.	11/12/2016	\$221.10	Samuel Lemmo	Dec. 5-6, 2016	OCCL	Sam Lemmo
Log #010 in Nov.	11/9/2016	\$240.50	Julie China	Dec. 16, 2016	OCCL	Sam Lemmo
Log #011 in Nov.	11/9/2016	\$240.50	Jean McManus	Dec. 16, 2016	OCCL	Sam Lemmo
Log #012 in Nov.	11/9/2016	\$242.60	Julie China	Nov. 18, '16	OCCL	Sam Lemmo
Log #013 in Nov.	11/9/2016	\$242.60	Jean McManus	Nov. 18, '16	OCCL	Sam Lemmo
Log #014 in Nov.	11/10/2016	\$196.39	Julie China	Nov. 15, '16	OCCL	Sam Lemmo
Log #015 in Nov.	11/10/2016	\$222.60	Julie China	Nov. 16, '16	OCCL	Sam Lemmo
Log #016 in Nov.	11/12/2016	\$221.10	Jean McManus	Dec. 5-6, 2016	OCCL	Sam Lemmo
Log #017 in Nov.	11/10/2016	\$203.50	Julie China	Dec. 1, 2016	OCCL	Sam Lemmo
Log #018 in Nov.	11/10/2016	\$240.50	Julie China	Dec. 2, 2016	OCCL	Sam Lemmo
Log #019 in Nov.	11/10/2016	\$215.50	Julie China	Dec. 5, 2016	OCCL	Sam Lemmo
Log #020 in Nov.	11/10/2016	\$242.60	Julie China	Dec. 19, 2016	OCCL	Sam Lemmo
Log #021 in Nov.	11/9/2016	\$248.20	Jean McManus	Nov. 15-16, 2016	OCCL	Sam Lemmo
Log #022 in Nov.	11/10/2016	\$215.50	Julie China	Dec. 6, 2016	OCCL	Sam Lemmo

20170727 #10 Listing of all contracts ... #3.xlsx / TMT; 18/20

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20170727 #10 Listing of all contracts ... #3.xlsx / TMT; 18/20

# APPENDICES

Revised 7/31/2017

Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
Log #305 in Oct.	9/15/2016	\$209.10	S. Michael Cain	Sept. 25-26, 2016	OCCL	Sam Lemmo
Log #306 in Oct.	9/15/2016	Credit \$209.10	Julie China	Sept. 25-26, '16 (Credit Refund for Cancelled Trip)	OCCL	Sam Lemmo
Log #307 in Oct.	9/15/2016	\$209.10	William Wynnhoff	Sept. 25-26, 2016	OCCL	Sam Lemmo
Log #308 in Oct.	9/15/2016	\$209.10	Julie China	Sept. 25-26, 2016	OCCL	Sam Lemmo
Log #312 in Oct.	9/27/2016	\$188.40	Julie China	Oct. 3, 2016	OCCL	Sam Lemmo
Log #313 in Oct.	9/27/2016	\$188.40	Jean McManus	Oct. 3, 2016	OCCL	Sam Lemmo
Log #321 in Oct.	9/27/2016	\$12.65	S. Michael Cain	Oct. 3, '16 (FEE for 1st Change of Date to 10/3-4/16)	OCCL	Sam Lemmo
Log #322 in Oct.	9/27/2016	\$7.94	S. Michael Cain	Oct. 3, '16 (FEE for 2nd Change of Date to 10/3-5/16)	OCCL	Sam Lemmo
Log #330 in Nov.	10/17/2016	\$201.99	S. Michael Cain	Oct. 17-20, '16 (Change of Date to 10/17-19/16)	OCCL	Sam Lemmo
Log #331 in Nov.	10/14/2016	\$196.39	Julie China	Oct. 17, '16	OCCL	Sam Lemmo
Log #332 in Nov.	10/14/2016	\$196.39	Jean McManus	Oct. 17, '16	OCCL	Sam Lemmo
Log #333 in Nov.	10/14/2016	\$196.39	William Wynnhoff	Oct. 17, '16	OCCL	Sam Lemmo
Log #334 in Nov.	10/14/2016	\$182.00	Jean McManus	Oct. 18-20, '16	OCCL	Sam Lemmo
Log #293 in Sep.	8/15/2016	\$168.40	Jean McManus	Aug. 29, '16	OCCL	Sam Lemmo
Log #294 in Sep.	8/15/2016	\$168.40	Julie China	Aug. 29, '16	OCCL	Sam Lemmo
Log #278 in Aug.	7/19/2016	\$232.60	S. Michael Cain	Aug. 5, '16	OCCL	Sam Lemmo
Log #279 in Aug.	7/19/2016	\$232.60	Julie China	Aug. 5, '16	OCCL	Sam Lemmo
Log #280 in Aug.	7/19/2016	\$232.60	Jean McManus	Aug. 5, '16	OCCL	Sam Lemmo
Log #281 in Aug.	7/19/2016	\$232.60	William Wynnhoff	Aug. 5, '16	OCCL	Sam Lemmo
Log #285 in Aug.	8/8/2016	\$208.50	S. Michael Cain	Aug. 12, '16	OCCL	Sam Lemmo
Log #286 in Aug.	8/8/2016	\$208.50	Jean McManus	Aug. 12, '16	OCCL	Sam Lemmo
Log #287 in Aug.	8/8/2016	\$208.50	Julie China	Aug. 12, '16	OCCL	Sam Lemmo
		\$22,864.26				
	less refunds	\$2,329.10		CREDIT REFUNDS	OCCL	Sam Lemmo
	total	\$20,535.16		\$192.60	OCCL	Sam Lemmo
				\$242.51	OCCL	Sam Lemmo
				\$247.60	OCCL	Sam Lemmo
				\$228.49	OCCL	Sam Lemmo
				\$242.60	OCCL	Sam Lemmo
				\$240.50	OCCL	Sam Lemmo
				\$240.50	OCCL	Sam Lemmo
				\$242.60	OCCL	Sam Lemmo
				\$242.60	OCCL	Sam Lemmo
				\$209.10	OCCL	Sam Lemmo
				\$2,329.10	OCCL	Sam Lemmo
			SUBTOTAL			
P-Card Statement				<b>NEWSPAPER AD</b>		
Log #320 in Oct.	9/19/2016	\$1,019.27	Star-Advertiser Midweek	Ntc. Of Contested Case Hearing on 10/11/16	OCCL	Sam Lemmo
					OCCL	Sam Lemmo
P-Card Statement				<b>COPIES OF TRANSCRIPT</b>		
Log #453 in May	4/19/2017	\$1,796.86	Kona Impact, LLC	Printing Services of Transcripts	OCCL	Sam Lemmo
Log #454 in May	4/20/2017	\$472.04	Professional Image, Inc.	Printing Services of Transcripts	OCCL	Sam Lemmo
P.O. #C72639	4/28/2017	\$1,233.00	U.H. at Hilo Graphic Services	Printing Services of Transcripts	OCCL	Sam Lemmo
				<b>MISCELLANEOUS COST</b>		
Log #441 in Apr.	3/7/2017	Credit \$79.05	Courier Corp. of Hawaii	Credit Refund re: Delivery of Docs. From Hilo to Oahu	OCCL	Sam Lemmo
Log #439 in MAR.	3/7/2017	\$463.76	Courier Corp. of Hawaii	Deliver Docs. From Hilo to Oahu	OCCL	Sam Lemmo
Log #361 in Nov.	10/14/2016	\$206.87	Courier Corp. of Hawaii	Deliver Docs. From Oahu to Hilo	OCCL	Sam Lemmo

20170727 #10 Listing of all contracts ... #3.xlsx / TMT; 19/20

DLNR-LD-012908

# APPENDICES

Revised 7/31/2017

Audit FY2016-FY2017 Team

Contract/PO #	Award Date	Amount	Contractor	Description	Division	Contact
PO # C60572	09/09/15	\$ 75,000	Munekiyo Hiraga	Consulting services re State properties on Banyan Drive, Hilo, including planning and community outreach.	LD	K Moore
PO # C60573	09/09/15	\$ 75,000	Munekiyo Hiraga	Consulting services re State properties Kanoelehua Industrial Area, Hilo, including planning and community outreach.	LD	K Moore
PO # C62698	05/11/16	\$ 95,000	Brown and Caldwell	Review of design and construction plans for Naniloa Hotel in Hilo.	ENG	V Suzuki
Contract # 65295	11/22/16	\$ 142,518	RM Towill Corporation	Professional planning and engineering services for assessing work necessary to permit and demolish buildings on three hotel/apartment sites on Banyan Drive, Hilo.	ENG	V Suzuki
PO # C72816	05/26/17	\$ 95,000	Brown and Caldwell	Review of design and construction plans for Naniloa Hotel in Hilo.	ENG	M Agbayani
64972	04/06/16	\$ 280,000	Ashford & Wriston LLP	Contract for Special Deputy Attorney General Services	LD	Russel Y. Tsuji
65036	03/31/16	\$ 200,000	Riki May Amano	Contest Case Hearing	CO	Bin Li
65036	02/01/17	\$ 150,000	Riki May Amano	Contest Case Hearing - Supplemental Contract No. 1	CO	Bin Li
65036	07/01/17	\$ 100,000	Riki May Amano	Contest Case Hearing - Supplemental Contract No. 2	CO	Bin Li

20170727 #10 Listing of all contracts ... #3.xlsx / Miscellaneous Contracts; 20/20

DLNR-LD-012909

## APPENDIX F: HAWAII AGRIBUSINESS PLAN 2021 (DECEMBER 2020)<sup>268</sup>

DECEMBER 2020

# HAWAII AGRIBUSINESS PLAN 2021



Agribusiness Development Corporation ADC 001337

<sup>268</sup> ADC provided four copies of "Hawaii Agribusiness Plan 2021" to the Committee in response to the subpoena duces tecum issued on August 13, 2021. This copy appears to be the latest version of the 2021 Plan produced by ADC as of December 2020.

## CONTENTS

<b>3</b>	Introduction
<b>5</b>	ADC Framework for Increased Agricultural Productivity
<b>6</b>	Land Acquisition & Development
<b>8</b>	Irrigation System Development & Maintenance
<b>9</b>	Improve Components of the Food System
<b>10</b>	HRS 163D-5(a) Requirements
<b>12</b>	Appendix 1: Past Agriculture Strategic Plans
<b>13</b>	LRB Report: No Further Study Needed; Implementation Needed
<b>23</b>	Appendix 2: Maps

## INTRODUCTION

Before developing the Hawaii Agribusiness Plan, the Agribusiness Development Corporation (ADC) resolved to understand the numerous reports and plans prompted by the legislature and other agricultural interests; to identify the organizational, procedural, and substantive hurdles preventing the ADC from operating as effectively as anticipated; and to assimilate these reports and plans into a coherent and comprehensive plan to expand agriculture in Hawaii.

The earliest of these efforts was the 1997 Legislative Reference Bureau (“LRB” or “Bureau”) Report No. 2 [“Plan(ing) Is Not A Four-Letter Word: A Formative Evaluation of the Agribusiness Development Corporation”]. That year, the Bureau made seven recommendations, including recommendations that ADC be given more time and sufficient staffing to meet its mandates; that deadlines be imposed for the development of a strategic plan; and that the ADC mission be clarified. None of the seven recommendations were followed or acted upon.

In 2007, the LRB conducted a follow-up study (“Agribusiness Development Corporation: Revisited”), in response to Act 267, Session Laws of Hawaii 2006. The 2007 Report noted that the ADC had yet to prepare a Hawaii agribusiness plan and, as set forth in Act 267, solicited input from governmental agencies and stakeholders in the agricultural industry to identify the necessary elements of a Hawaii agribusiness plan. The Bureau identified and sent out fifty-four letters to governmental agencies and industry stakeholders asking for their input to this legislative request. The bulk of the report was a compilation and discussion of the responses that the Bureau received in response to its inquiry.





The 2007 Report found that the predominant sentiment of the stakeholders were:

- Further studies would be redundant; ADC should focus its resources on implementing existing studies
- Key elements of an agribusiness plan are already set forth in section 163D-5(a), HRS
- ADC's role in the growth of agriculture should be redefined to avoid overlapping with the roles of other agencies and organizations

The 2007 Report pointedly stated that the Legislature should decide whether the ADC should be an all-expansive agency or whether it should be more focused on what it was then doing at the time in 2007. In 2013, the Legislature began allocating tens of millions of dollars to the ADC towards acquiring agricultural lands from private landowners such as the Galbraith Agricultural Lands, and other vacant plantation lands to transition these lands into smaller diversified farms. Since then, ADC shifted its focus to developing, remediating, improving and making these lands available to the agricultural community, the foundations that are fundamental to successfully expand diversified agriculture before it casts its wide net over other areas of agribusiness. Those foundations and therefore ADC's goals are 1) Land

Acquisition and Development, 2) Irrigation System Development and Maintenance, and 3) Improving Components of the Food System.

<b>Land Acquisition &amp; Development</b>	<b>Irrigation System Development &amp; Maintenance</b>	<b>Improve Components of the Food System</b>
PURCHASE/ EXECUTIVE ORDER/ LAND EXCHANGE  INFRASTRUCTURE DEVELOPMENT/ MAINTENANCE	RESERVOIR DEVELOPMENT  SYSTEM DEVELOPMENT/ MAINTENANCE	GROWING HARVESTING PROCESSING PACKAGING DISTRIBUTING CONSUMING RECYCLING MARKETING

**ADC Framework for Increased Agricultural Productivity Land Acquisition & Development:**

The ADC manages 22,000 acres on the island of Kauai and Oahu. Of the 22,000 acres it manages, 13,900 acres have commercial value and are considered ideal lands for agriculture production. The remainder is comprised of gulches, ravines, ditches, and roadways. To date, the ADC issued license agreements and permits to agriculture operations for long-term use of 8,000+ acres, which represents over 60% of its total land inventory. Keeping large tracts of former plantation lands in agriculture and providing long-term licenses and leases to agricultural operations are the key elements to building the agriculture sector of the future.

**Goal:** Acquire and develop productive agricultural lands for agricultural development

**Objective(s):**

1. To maximize utilization (100% occupancy) of ADC agricultural land resources for diversified agribusiness.
2. To implement the State's goal to double local food production and consumption.
3. To reduce food imports.
4. To acquire and make agriculture lands available for production.
5. Educate the public on the importance of local agriculture and farming to our state economy and food supply during this COVID-19 pandemic.

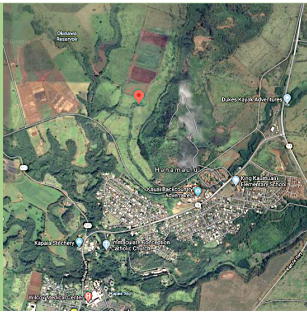


## LAND ACQUISITION & DEVELOPMENT

### ACTION ITEMS

#### OAHU

- Acquire additional acres into ADC land inventory (5 to 7 years). Selected parcels will be purchased to protect agriculture status and availability.
- Convert an additional 1,000 acres of vacant land to productive diversified agriculture status (1 to 3 years). Selected parcels will be targeted for land preparation including tree clearing and amending the conditions of the soil.
- Develop and implement a crop rotation framework that includes both livestock and crops (1 to 3 years).
- Develop facilities and infrastructure to accommodate agriculture activities (harvesting, packing, processing and distribution) (5 to 7 years).



#### KALEPA, KAUAI

- Convert 500 acres to productive diversified agriculture status (1 to 3 years). Selected parcels will be targeted for land preparation including tree clearing and amending the conditions of the soil.
- Implement a crop rotation program (1 to 3 years). Develop a crop rotation framework that includes both livestock and field crops.



#### KEKAHA, KAUAI

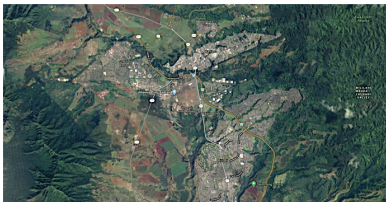
Convert 1,000 acres to productive diversified agriculture status (1 to 3 years). Selected parcels will be targeted for land preparation including tree clearing and amending the conditions of the soil.

**Irrigation System Development & Maintenance:** In addition to agricultural lands on Kauai and Oahu, the ADC also manages the Waiahole Water System. The ADC continues to work with its farmers to improve and maintain critical infrastructure necessary to support agricultural operations. In addition to ongoing maintenance of existing infrastructure, the ADC is also developing new infrastructure and improving water storage capacity by constructing reservoirs and storage ponds to ensure farmers have a consistent and affordable supply of irrigation water.

**Goal:** Assure the continued availability of adequate, reasonably priced water to lands to accommodate present and future agricultural activities.

**Objective(s):**

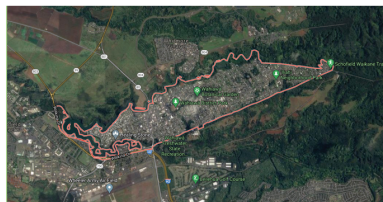
- To develop a master irrigation plan which incorporates system development, watershed management and water recycling.
- To maintain and improve the efficiency of existing irrigations systems.
- To expand agricultural water resources.



### CENTRAL OAHU

Implement the Central Oahu Watershed Management Plan (5 to 7 years).

Rehabilitate the existing Waiahole Water System which includes constructing a reservoir, back-up well development, enclosing high-risk sections, and improving data gathering (1 to 5 years).



### WAHIAWA, OAHU

Incorporate R-1 water from the Wahiawa Wastewater Treatment Plant into the agriculture system (5 to 10 years).

Expand system capacity by acquiring and incorporating 3 existing wells (1 to 3 years).

Develop additional reservoirs to accumulate surface water and incorporate into the agriculture system (2 to 5 years).

## IRRIGATION SYSTEM DEVELOPMENT & MAINTENANCE

### ACTION ITEMS



#### **KALEPA, KAUAI**

- Work with the Department of Land and Natural Resources to rehabilitate the Hanamaulu ditch portion of the existing irrigation system (2 to 5 years).
- Improve the Christian Crossing Bridge which provides access for standard trucks and heavy equipment (1 to 3 years).

#### **KEKAHA, KAUAI**

- Pressurize the existing irrigation system (1 to 5 years).
- Rehabilitate the existing irrigation system including repair of the hydro-electric plant (2 to 5 years).
- Work with the Kekaha Agriculture Association to improve the Kekaha Bridge which provides access for standard trucks and heavy equipment (1 to 3 years).

**Improve Components of the Food System:** A food system includes all processes and infrastructure involved in feeding a population: growing, harvesting, processing, packaging, transporting, marketing, consumption, and disposal of food and food-related items. It also includes the inputs needed and outputs generated at each of these steps. A food system operates within and is influenced by social, political, economic and environmental contexts. It also requires human resources that provide labor, research and education.

**Goal:** To improve the productivity of agriculture operations by providing brick and mortar facilities, as needed, and to promote efficient profitability by enticing the development of applied research and innovation on State lands and in State facilities.

**Objective:** Identify and deploy viable new techniques and tools to improve crop and livestock yield and marketability.

## ACTION ITEMS

### Research & Development:

- Greenhouse development to lower costs and implement new technology
- Plant breeding to develop new varietal and cultivar annually
- Improve the handling and processing of papaya
- Increase the 'ulu industry to productive scale

### Marketing:

- Increase exposure of emerging crops that include, but are not limited to, tilapia and 'ulu for local, as well as export markets such as papaya.
- Provide available space to producers who can afford to construct their own food hub facility.

### Kekaha, Kauai:

- Develop a central food hub to accommodate processing, packing, storage and distribution
- Develop a workforce housing solution with private partner

# APPENDICES

**HRS 163D-5(a) Requirements:** Over the past 25 years, all of the plantations have closed and many of the 9 items listed in 163D are obsolete or duplicate the function of the Hawaii Department of Agriculture. ADC will refocus its efforts on current and relevant priorities.

[1994] HRS 163D-5(a) The corporation shall prepare the Hawaii agribusiness plan which shall define and establish goals, objectives, policies, and priority guidelines for its agribusiness development strategy. The plan shall include but not be limited to the below.

1994 REPORT REQUIREMENT	2020 ADC COMMENTS
An inventory of agricultural lands with suitable adequate water resources that are or will become available due to the downsizing of the sugar and pineapple industries that can be used to meet present and future agricultural production needs.	Information provided by HDOA "Statewide Agricultural Land Use Baseline 2015" report.
An inventory of agricultural infrastructure that will be abandoned by sugar and pineapple industries such as irrigation systems, drainage systems, processing facilities, and other accessory facilities.	Useful inventory has been accounted for over the past 25 years.
An analysis of imported agricultural products and the potential for increasing local production to replace imported products in a manner that complements existing local producers and increases Hawaii's agricultural self-sufficiency.	Support provided by HDOA Agricultural Development Division.
Alternatives in the establishment of sound financial programs to promote the development of diversified agriculture.	Support provided by HDOA Agricultural Loan Division, DBEDT and the private sector.
Feasible strategies for the promotion, marketing, and distribution of Hawaii agricultural products in local, national, and international markets.	Support provided by HDOA Agricultural Development Division. ADC will focus on production development.

# APPENDICES

1994 REPORT REQUIREMENT	2020 ADC COMMENTS
Programs to promote and facilitate the absorbing of displaced agricultural workers into alternative agricultural enterprises.	Current issue is the lack of farm labor.
Strategies to insure the provision of adequate air and surface transportation services and supporting facilities to support the agricultural industry in meeting local, national, and international market needs.	Information provided in "The Demand for Interisland Shipping and the Impact of Shipping Costs on Hawaii Agricultural Production 2008" report.
Proposals to improve the gathering of data and the timely presentation of information on market demands and trends that can be used to plan future harvests and production.	Support provided by HDOA Agricultural Development Division.
Strategies for federal and state legislative actions that will promote the development and enhancement of Hawaii's agricultural industries.	Collaborate with Federal, State, County and Stakeholder organizations to support agriculture initiatives.





## APPENDIX 1

### PAST AGRICULTURE STRATEGIC PLANS

**LRB Report: No Further Study Needed; Implementation Needed:**

Perhaps the most emphatic comment in this regard came from Ms. Stephanie Whalen, President and Director of HARC:

With respect to the preparation of a Hawaii agribusiness plan I would like to bring to your attention if you haven't already discovered it that there have been at least 8 such plans without implementation since 1966. These were either called State Agricultural Plans or State Agricultural Functional Plans or similar titles. None of these plans have been implemented nor is there much difference among them. The issues have been recognized for decades; solutions have been suggested; little implementation has occurred.

Ms. Whalen goes on to note, as do other respondents, that "The Hawaii Farm Bureau Federation, an organization representing the farming community, has the most recently developed A Strategic Plan for Hawaii's Agriculture.... As all the state plans before it, it identifies what needs to be done. What is needed is for all the support organizations to work with this 'plan' and develop and support action items within their expertise for implementation." Further in her response she states: "If the goal of this is to support agricultural (sic), then another plan is not needed. What is needed is a recognition that the necessary elements have been identified over and over again in the past 4 decades in at least 9 plans already."

In a similar note, Ms. Teena Rasmussen, Chairperson of ADC states: "The Hawaii Farm Bureau Federation completed a very comprehensive plan titled 'Strategic Plan for Hawaii's Agriculture.'...We urge the LRB to look at these plans and studies in detail and avoid a duplication of effort." Also, the Maui County Farm Bureau stated: "The Hawaii Farm Bureau Federation has prepared and regularly updates a Strategic Vision and Implementation Actions for Agriculture in Hawaii. ...We strongly recommend that this Vision and Plan be used as the basis a (sic) Hawaii Agribusiness Plan. Duplication of effort is counterproductive. Rather, time would be better spent further developing the implementation actions."

Similarly, HFBB notes: "ADC should expound on the existing general agricultural plans and move into the implementation state with annual review of performance and measurement standards." Further in its response, HFBB states: "The Bureau should use existing agricultural plans such as the Farm Bureaus' (sic) strategic plan and the DOA's general agricultural plan. This will reduce duplication of resources and efforts to start a

whole new plan. At this point, we should be updating or implementing sections within these plans." Finally, HC&S (?) states: "Preparing a new Plan may not be needed ... rather implementation of an existing plan."

Due to the prominence with which the HFBF's plan is mentioned in many responses, a quick review of that plan is warranted. The plan opens with an introduction and vision followed by a stated purpose.

The purpose of this plan is to evaluate the production, financial, marketing, and distribution problems and opportunities facing Hawaii's agriculture. The plan provides a roadmap to formulate a strategy to address issues hindering Hawaii's agriculture and to fully realize its potential. By identifying each issue, attention can be focused on reaching new or different solutions. This third version begins to identify some of the actions that have taken place and sets into the implementation phase of the Plan.

Private sector motivation must be the driver to move these goals and objectives forward. Agriculture should not rely on government or others to determine its future. Government's role must be limited to providing the political, regulatory, and infrastructural support needed to enhance agriculture.

#### **Previous Agriculture Plans Summary | Section 1 (identified by Paul Schwind 2000)**

##### *Hawaii State Plan*

Next to the Constitution in importance, the State Plan (first enacted in 1978) contains legislatively adopted agricultural and agriculture-related objectives, policies and priority guidelines. The three primary objectives of the State Plan for agriculture are (1) viability of Hawaii's sugar and pineapple industries, (2) growth and development of diversified agriculture throughout the State, and (3) an agriculture industry that continues to constitute a dynamic and essential component of Hawaii's strategic economic and social well-being. These broad objectives are fleshed out by policies (long-range courses of action to be carried out to achieve the objectives), and priority guidelines (focus for public and private actions to address major statewide problems requiring more immediate attention). The State Plan Policy Council, which had been the core of the statewide planning coordination and implementation system for the State Plan, was abolished by the Legislature in 1991.

The State Plan distinguishes policies and priority guidelines in the sense that a guideline "may be deviated from without penalty or sanction." implying that there might be some legal penalty or sanction for deviating from a policy. But priority guidelines are further defined as those which "shall take precedence when addressing areas of statewide concern." The State Plan policies and priority guidelines for agriculture are stated in full in Appendix A and are cited as appropriate in the following sections.

*Hawaii State Constitution*

The most fundamental direction for agricultural planning is contained in the State Constitution, as amended by the Constitutional Convention of 1978:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action.

Notwithstanding the explicit direction adopted by the electorate more than twenty years ago. The Legislature has to date failed to enact the standards and criteria for conservation and protection of important agricultural lands. (The identification and inventory of such lands is discussed below.)

*DOA State Agriculture Functional Plan*

This is the only plan specifically for agriculture to have achieved a measure of official acceptance. As such, the Functional Plan (prepared by the Department of Agriculture (DOA) with advice from an Advisory Committee appointed by the Governor) identifies priority issues in agriculture and contains objectives, policies. Also identified is implementing actions including legislative proposals: initiatives for organization, management programs, and services; and development of facilities or physical infrastructure.

As originally conceived, the Functional Plans were intended to be adopted by concurrent resolution of the Legislature upon the findings and recommendations of the State Plan Policy Council, and the Plan for agriculture was adopted in this manner in 1985. Subsequently, Functional Plans were to be submitted to the Legislature by the Governor for information only, along with the Policy Council's findings and recommendations; it is in this form that the last Agriculture Functional Plan was completed and approved by Governor John Waihee on May 22, 1991. After the abolition of the Policy Council, Functional Plans were to be prepared in accordance with guidelines developed by the Department of Budget and Finance; but inasmuch as such guidelines were not forthcoming, preparation of Functional Plans effectively ceased after 1991.

Implementation of the State Agriculture Functional Plan has also met evolving purposes over the years as the Hawaii State Plan underwent amendments. Initially, Functional Plans were not to be used as statements or interpretations of State policy without legislative approval. Later, the Plans were to be used as guidelines to implement State policies adopted by the Legislature. Most recently, Functional Plans are to be used "to guide the allocation of resources" for the implementation of legislatively adopted policies. The issue areas and a selection of the objectives, policies, and actions for which the DOA was the lead agency for implementation in its last Functional Plan are stated in Appendix B, and are cited as appropriate in the following sections.

#### *OSP Transformation of Hawaii's Agriculture*

The former Office of State Planning (OSP) produced a document in 1994 which proposed a comprehensive, coordinated mechanism to guide the transformation from the dominance of the sugar and pineapple industries to market-driven, fully diversified agribusiness. The OSP document proposed that the former Governor's Agriculture Coordinating Committee (GACC) be the lead agency ("the voice of the Governor") for implementation of a "transformed agriculture" through the mechanism of commodity industry "Action Groups." These Action Groups would consist of partnerships of public and private interests ("statespersons and stakeholders") empowered by their linkages to achieve specific goals and objectives.

The former OSP saw itself as the logical focus for a leadership role in a "Transformation Action Group" involved with the advocacy of agriculture in the context of broad, "transcommodity" issues. However, OSP also foresaw an important role for the ADC as a semi-government corporation to facilitate the transformation of agricultural infrastructure from plantation operations into other agricultural enterprises by means of projects self-funded by their own beneficiaries. The general bottleneck areas identified in agriculture by OSP, and examples of the kinds of actions envisioned for ADC, are

summarized in Appendix C; these and additional materials from the "Transformation" document are also referred to as appropriate in the following sections.

*DOA New Opportunities for Agriculture in Hawaii*

Independently of the OSP's "Transformation" document as well as the strictures of the Functional Plan process, the Department of Agriculture (DOA) prepared its own assessment of the need for an empowered "champion" or advocate and leader for agriculture in Hawaii. In the "Blueprint Plan," the DOA envisioned a future in which prime agricultural lands were fully utilized by a diversified, intensive, and technologically sophisticated agricultural industry developed in a dynamic public/private partnership. The "Blueprint" was approved by the Board of Agriculture [for the purpose of review and comment] in December, 1994, and presented to a conference at the College of Tropical Agriculture and Human Resources (CTAHR) at the University of Hawaii in April 1995.

Not surprisingly, the "Blueprint" foresaw DOA as the "torch bearer" and catalyst for planning with implementation supported primarily by the agricultural development plans, projects, and facility programs of the ADC and the agricultural research, development and extension activities of the Hawaii Agriculture Research Center (HARC) [former Hawaiian Sugar Planters' Association]. However, in a departmental restructuring which accompanied a more than twenty percent reduction in workforce, the DOA's Planning and Development Office was eliminated in September 1996 and its functions were placed within the Chairperson's office with reduced staffing.



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## *DOA Hawaii's Agriculture: 2000 and Beyond*

The DOA established a more commodity specific vision in 1996 with short-term "benchmark" goals by crop and livestock categories. The vision foresees Hawaii as an agricultural center for production, marketing, and technology transfer -- a "Holland of the Pacific" for potted plants and cut flowers -- and looks to agriculture as a growth opportunity in which Hawaii can be competitive and reduce its dependency on tourism. In its "Agriculture 2000" document, the Department sought a 15 to 30 percent increase in farm production value, or a dollar increase of from \$50 to \$100 million, between 1994 and the year 2000. Examples of means by which these production goals could be achieved include creation of a hog breeding operation; overcoming Japanese quarantine restrictions against potted foliage plants; preservation of irrigation resources (ditch systems) throughout the State; encouraging local production of livestock feed; control of papaya ringspot virus; test marketing of tropical specialty fruits treated by irradiation to prevent fruit fly infestation; development of a center for biological control; support of "eco" or "green" tourism; and use of vacant lands for agroforestry (production of high-value hardwoods).

## *ADC Progress Report Draft Outline*

The ADC reorganized internally during 1997 to become more project focused: this focus is reflected in the Draft Outline of the Hawaii Agribusiness Plan included in the Progress Report incorporated in the ADC Annual Report for that year. The report notes that 103,400 acres and 193 million gallons per day (MGD) of irrigation water have become available since 1990 due to closure of sugar plantations, with only modest gains in acreage planted and infrastructure utilized in other types of crops. The ADC has seen itself as playing a complementary role to DOA in achieving the goal of transforming Hawaii's agricultural industry into one of farmers empowered by an entrepreneurial, market-driven philosophy. In the past, ADC fulfilled this role by assisting dislocated agricultural workers make the transition into their own farming operations. In the future, ADC expects to focus more on projects with the greatest effect on the entire industry, in particular preserving and making available critical land, roadways, and water delivery infrastructure.

The projects prioritized in the Draft Outline of the Hawaii Agribusiness Plan are (1) purchase of the Waiahole Water System, (2) restoration of Lower Hamakua Ditch, (3) profitable agricultural reuse of Waipio Peninsula, (4) feasibility investigation of a Hawaii Freight Consolidation Center along with West Coast Redistribution Centers, and (5) new subdivision standards for Reparcelsation of Agriculturally Zoned Lands. To these five projects, a sixth was added in 1998, (6) a Marketing Inventory of Former Sugarcane Lands and Water Systems, to publicize the availability and suitability of these resources for a variety of new crops.

### *RETA-H Marketing Inventory*

This is the second example of a concept proposal submitted by the ADC for federal funds through the Rural Economic Transition Assistance Hawaii (RETA-H) program. In the first example, the concept proposal for the Waipio Peninsula project was approved, and ADC was invited to submit a full proposal for \$100,000 in matching funds for engineering and feasibility studies of off-site water source development and on-site infrastructure layout and costs on 600 arable acres of former sugarcane land (and 52 acres requiring fill and stabilization), which may be used for seed corn, silage, and soybean production. In the second example, ADC is seeking \$400,000 to inventory 60 to 80 sugarcane water systems and adjacent lands in detail as to their sources of water, ownership, capacity, average flow, condition, personnel, operating costs, and location of agricultural lands served. This information is essential to the State's efforts to attract small diversified family farms with financing to start up and expand operations on lands formerly utilized in sugarcane production.

### *DOA Agricultural Water Use and Development Plan*

As part of the Hawaii Water Plan required under the State Water Code, each County shall prepare a Water Use and Development Plan, and the appropriate agency (Department of Land and Natural Resources (DLNR)) shall prepare a State Water Projects Plan. To this was added in 1998 the Agricultural Water Use and Development Plan, to be prepared by DOA and submitted to the Legislature before the Regular Session of 2000. The Agricultural Water Plan is to include a master inventory of irrigation water systems, identifying the extent of rehabilitation needed, subsidy required for the cost of repair and maintenance, and criteria to prioritize the rehabilitation of systems. The Plan shall develop a five-year program to repair the irrigation systems and set up a long-range plan for their management.

### *CTAHR Strategic Plan*

The College of Tropical Agriculture and Human Resources (CTAHR) at the University of Hawaii recently issued an undated five-year Strategic Plan to guide it through the aftermath of a period of severe budget restrictions in which the College experienced a 15 percent increase in student enrollment and a net loss of 49 professional positions. The vision of CTAHR is that it will be "the premier resource for tropical agricultural systems and resource management in the Asia-Pacific region." In its mission, CTAHR is committed to "the preparation of students and all citizens of Hawaii for life in the global community through research and educational programs supporting tropical agricultural systems that foster viable communities, a diversified economy, and a healthy environment." The two centerpieces of the Strategic Plan are (I) a comprehensive



reorganization of CTAHR's staff and resources into six departments from eleven; and (2) rejuvenation of outreach and Extension programs to make the College's new academic programs and its research results more accessible to the citizens of Hawaii. New faculty, staff, and capital improvement funds are needed for all of these efforts.



*USDA/HACC Action Plan Statement*

A document prepared by the "USDA/Hawaii Agricultural Coordinating Committee" suggests a joint Federal/State effort at outlining the essential content of a new plan for agriculture in Hawaii. The action statements are organized into eleven categories, consisting of Market Development, Pest Management, Quarantine Treatment, Biotechnology Development, Forestry Development, Reuse of Agricultural Lands, Rural Infrastructure Development, Agricultural Financial Assistance, Conservation and Resource Management, Transportation, and Other Issues. The statements are a response by the Office of the Governor to a request from Senator Daniel K. Inouye that the State of Hawaii develop a Memorandum of Understanding with the U.S. Department of Agriculture. The document is distinguished by reference to a number of Federal agencies which may be role players in the agricultural development process in Hawaii. These agencies include the Foreign Agricultural Service, Agricultural Research Service and Rural Business Cooperative Service of the U.S. Department of Agriculture (USDA).

*Hawaii Agriculture Research Center*

No survey of agribusiness development efforts in Hawaii would be complete without specific reference to the programs of the Hawaii Agriculture Research Center (HARC), which during 1997 completed its transformation from its predecessor organization, the Hawaiian Sugar Planters' Association (HSPA). The historical focus of HARC (HSPA) has been on plant breeding and selection for sugarcane, more recently augmented by related research in diversified crops such as acacia koa and eucalyptus (commercial forest products), coffee, papaya, pineapple, banana, asparagus, and taro. The administrative structure of HARC reflects its blend of old and new emphases, with its Board of Directors consisting of representatives from sugar producing companies, assisted by an Advisory Council of representatives from the Hawaii Farm Bureau Federation, the forestry, coffee, papaya, macadamia nut, seed com, and pineapple industries, and DOA and CTAHR. HARC supports the Farm Bureau's Commodity Advisory Group in helping export + industries solve problems related to land, water, transportation, marketing, and the environment. HARC also works cooperatively with DOA, CTAHR and USDA to share expertise, facilities, and other resources. HARC's budget is symptomatic of its eclectic nature with 60 percent of its funding coming from the private sector, 21 percent from the State, and 19 percent from the Federal Government.

## **Section 2: Recent Agriculture Plans**

The Hawaii 2050 Sustainability Plan was published in 2008 in accordance with Act 8, Special Session Laws of 2005. Act 8, Special Session Laws of 2005 requires the State Auditor, with the assistance of the Office of Planning, to update this plan every ten years; due to a lack of funding for the update of this plan, the Office of Planning, through the State's Sustainability Coordinator, conducted an evaluation of the metrics and indicators established by the 2008 Hawaii 2050 Sustainability Plan. This evaluation and measurement was the first of its kind over the past decade. This report reviews the data collected over the course of this ten-year measurement of Hawaii's progress toward sustainability according to the Hawaii 2050 Sustainability Plan's 5 goals, 9 "2020 benchmarks", 22 strategic actions, and 55 indicators.

### *Hawaii Farm Bureau Federation: A Strategic Plan for Hawaii's Agriculture 2004*

The Hawaii Farm Bureau is a grassroots non-profit organization founded by Hawaii farmers and ranchers and working with organizations, communities and individuals involved in all aspects of the Agricultural Industry in Hawaii. The purpose of the plan is to evaluate the production, financial, marketing, and distribution problems and opportunities facing Hawaii's agriculture. The plan provides a roadmap to formulate a strategy to address issues hindering Hawaii's agriculture and to fully realize its potential. By identifying each issue, attention can be focused on reaching new or different solutions. This third version begins to identify some of the actions that have taken place and sets into the implementation phase of the Plan. Private sector motivation must be

the driver to move these goals and objectives forward. Agriculture should not rely on government or others to determine its future. Government's role must be limited to providing the political, regulatory, and infrastructural support needed to enhance agriculture.

*DBEDT Office of Planning: Increased Food Security and Food Self-Sufficiency Strategy 2012*

The "Increased Food Security and Food Self-Sufficiency Strategy" sets forth objectives, policies and actions to increase the amount of locally grown food consumed by Hawaii's residents. The economic impact of food import replacement is significant. Replacing just 10% of the food Hawaii currently imports would amount to approximately \$313 million dollars which would remain in the State. The Strategy recommends actions to market "Buy Local/It Matters" and to brand and label local food products. The Strategy emphasizes increasing production by strengthening agricultural infrastructure i.e. agricultural parks, irrigation systems and distribution systems/facilities. It also recommends actions to provide for food safety, pest prevention and control, workforce training, research and extension services, and policy and organizational support. A critical factor towards successful implementation will be building partnerships with the increasing number of organizations involved in food self-sufficiency/ food security.

*Agriculture Strategy Working Group: A Strategic Direction for Agriculture in Hawaii 2017*

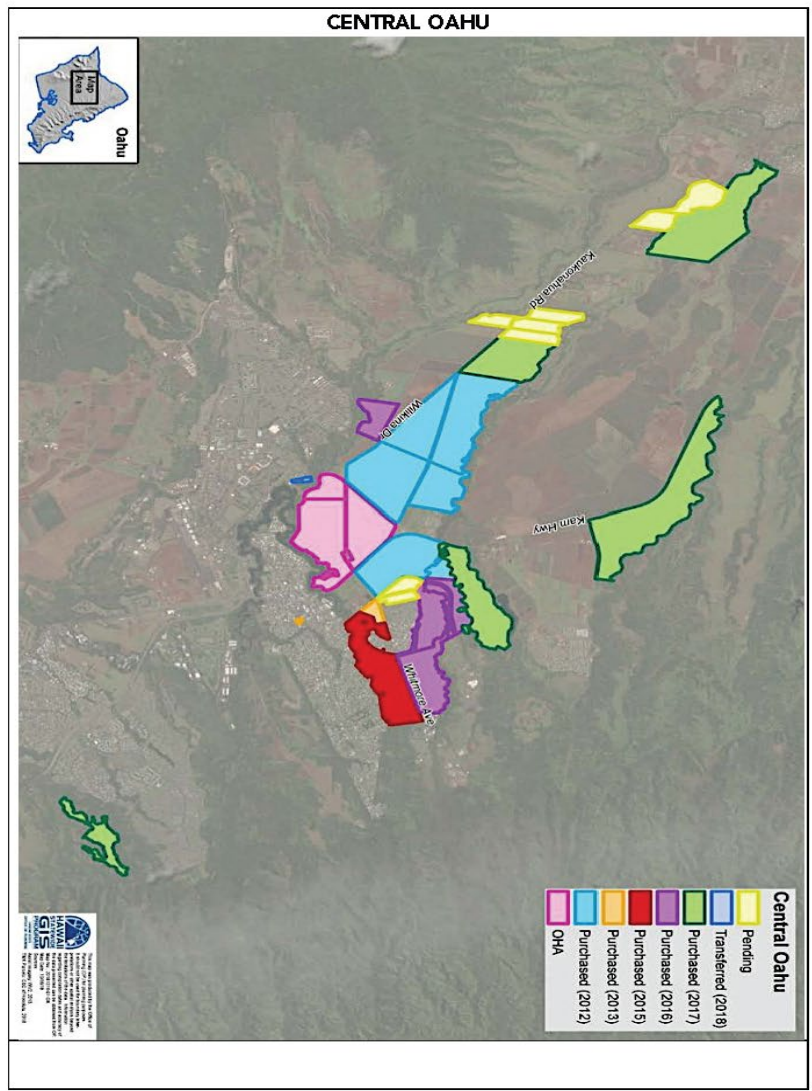
Focused on addressing the following issues: 1) Identify regions to develop economies of scale for the purposes of cost control and price competitiveness; 2) Identify commodities that can replace imports and commodities that will increase exports (i.e., value-added products) based on private distributors; 3) Match commodities with regional pilot project areas to see growth potential; and 4) Create a comprehensive approach to address problems of housing, workforce training, and research.

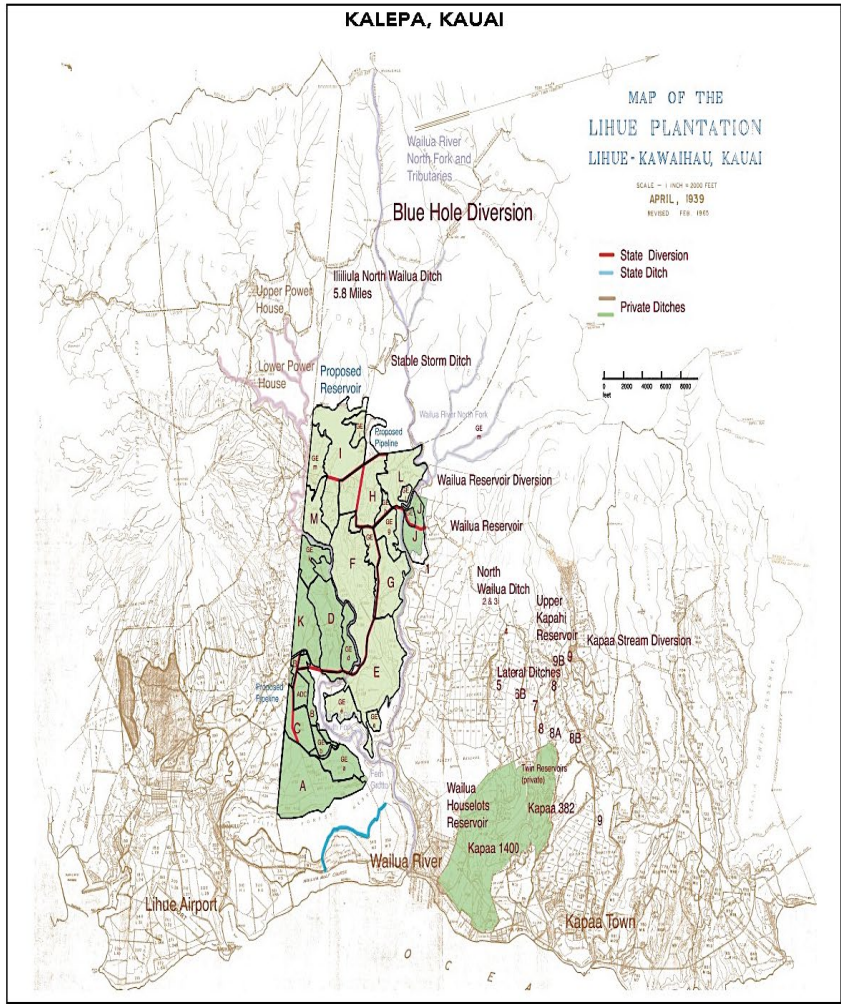
*DBEDT Office of Planning: Hawaii 2050 Sustainability Plan Ten Year Measurement Update (2008-2017) 2018*

The Hawaii 2050 Sustainability Plan was published in 2008 in accordance with Act 8, Special Session Laws of 2005. Act 8, Special Session Laws of 2005 requires the State Auditor, with the assistance of the Office of Planning, to update this plan every ten years; due to a lack of funding for the update of this plan, the Office of Planning, through the State's Sustainability Coordinator, conducted an evaluation of the metrics and indicators established by the 2008 Hawaii 2050 Sustainability Plan. This evaluation and measurement was the first of its kind over the past decade. This report reviews the data collected over the course of this ten-year measurement of Hawaii's progress toward sustainability according to the Hawaii 2050 Sustainability Plan's 5 goals, 9 "2020 benchmarks", 22 strategic actions, and 55 indicators.

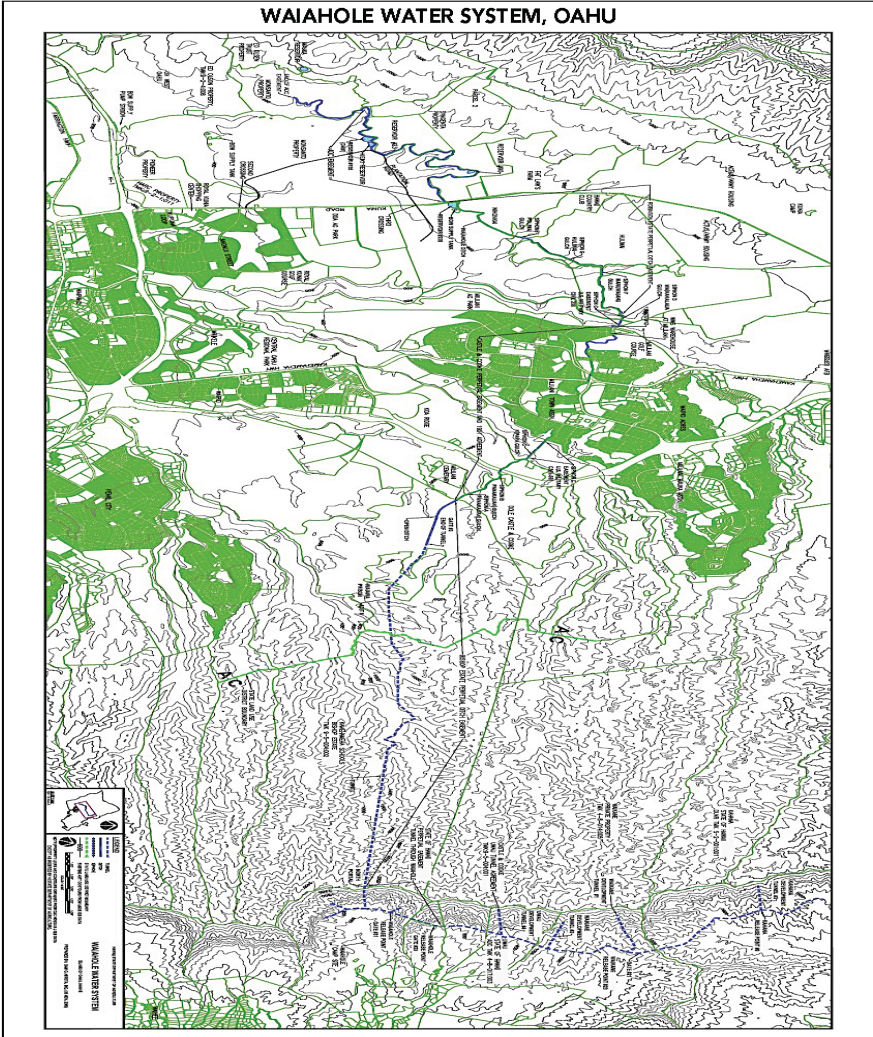
APPENDIX 2  
MAPS

# APPENDICES











# APPENDICES

## APPENDIX G: ADC LAND MANAGEMENT POLICIES AND GUIDELINES (2009 REVISION)

*Approved at June 24, 2009 meeting*

State of Hawaii  
Agribusiness Development Corporation

### **LAND MANAGEMENT POLICIES AND GUIDELINES (2009 Revision)**

#### **A. OBJECTIVES**

Every project and/or program is unique and different in its own way. Since ADC is still in the process of developing models to handle agricultural lands and infrastructure, it would be premature to establish rigid administrative rules and procedures at this time. Nevertheless, in an effort to promote uniformity, predictability, and fairness in its action, ADC adopts these policies and guidelines for its decision-making relating to its land and program management.

**DIVERSIFIED AGRICULTURE.** ADC was created to help transition the agricultural industry from plantation operations to a multi-crop industry. One of the major issues facing agriculture during the past years was the closure of plantations and the need to preserve plantation land and infrastructure for future use. ADC has been tasked with developing innovative ways to manage large tracts of agricultural land and/or its related infrastructure and to redeploy these resources to support a diversified agricultural industry.

**LAND MANAGEMENT AND AGRICULTURAL CONSERVATION.** When land is available under ADC's management, ADC desires to ensure long-term viability of agriculture in the project on that land. A major goal of the ADC is to support, facilitate and create thriving and self-sustaining, commercial agricultural activities, which can survive financially, socially and politically without funding or other direct support from ADC or other state agency.

#### **B. GENERAL POLICIES AND PRINCIPLES**

- (1) ADC decisions should support a level of agricultural activities using best management production and conservation practices whenever feasible that will optimize the use of land and preserve the infrastructure such as irrigation ditches, reservoirs, wells, roads, hydroelectric plants and the like.
- (2) ADC decisions should support financially viable projects that are able to present a reasonable return to the state. "Return" could be measured in tangible terms, such as rental income, employment, and tax revenue, or in intangible terms, such as preserved open space and reduction in soil erosion.
- (3) ADC is a self-funded state agency requiring little or no general fund support. Therefore, ADC projects need to be cash flow positive or have very realistic potential

**ADC 001579**

ADC Land Management Policy, 2009  
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cash flow positive in a few years. ADC will conduct a financial analysis before undertaking any project to determine the financial suitability of the project.

(4) ADC may, on its own or in conjunction and cooperation with existing tenants, reserve a portion of its land for the training of small-scale or startup farmers. ADC may collaborate with DOA, CTAHR, the several counties, or other federal, state, municipal or private entities on this objective.

(5) ADC should, whenever practicable, concentrate greater time and resources to facilitating its objectives, and delegate the day-to-day maintenance of land and infrastructure to the tenants. ADC will conduct financial audits from time to time to ensure that the maintenance funds created under this section are expended properly and that the property and infrastructure so used are maintained up to reasonable standards.

(6) ADC may seek funding for the construction, repair, or upgrade of facilities or infrastructure from other public or private sources when appropriate.

(7) ADC recognizes that compatibility of crops is very important for the success of agriculture and should require all tenant applicants to address the compatibility of a crop or operation to, neighboring crops. ADC encourages tenants and potential tenants to resolve any compatibility issues among themselves prior to bringing the issue before the board.

(8) Just as ADC projects should be self-sustaining, ADC should assist tenants whenever possible to achieve such financial independence. Tenants will be required to submit business plans and/or land utilization plans to ADC which, among other things, addressing their financial and agricultural viability before ADC makes any decision to issue any leases or licenses.

(9) In order to control the quality and desired mix of tenants, ADC also requires all potential sub-lessees or sub-licensees to submit business plans and land utilization plans for approval, which are to be analyzed under the same considerations and concerns governing the granting of leases, licenses and permits.

(10) A statement indicating the intent to obtain a NRCS-approved conservation plan is a requirement of tenancy.

## **C. SPECIFIC ACTIONS.**

### **1. ACREAGE ASSIGNMENTS.**

(a) ADC leases, licenses, or revocable permits, should consist of blocks that include proportionate shares of cultivatable, contributory, and waste lands to ensure that

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ADC Land Management Policy, 2009  
Page 3 of 4

every acre of a property will be maintained and managed by tenants. Reasonable proportions may vary from project to project, depending upon the topography, rainfall, climate, etc. of the area.

(b) ADC should provide opportunities for tenants and/or potential tenants to negotiate their choice of fields and parcels in keeping with the objective of equality among tenants. If not resolved amongst the tenants, ADC may assign parcels to tenants or offer the parcels up for bid.

(c) All tenants must submit a land utilization plan which anticipates at least a 50% utilization of all arable or useable land within 3 to 5 years of the effective date of the land tenure. Acceptable uses may include acreage used for crop isolation and subleasing sublicensing to other agricultural entities. ADC reserves the right to audit tenants' land use activities and progress. Excess land not needed for a tenant's current use or for the tenant's future expansion will be subject to further negotiation with the existing tenant, and/or be made available to others.

(d) ADC will negotiate the management and operation of common infrastructure and/or common areas with a tenant group or cooperative whenever feasible, as noted above.

## **2. RENTS AND OTHER TERMS**

(a) ADC will either use an independent market appraisal or comparable rent information to determine a fair market rent. Should a tenant request a discount from the fair market rent, the tenant should be required to submit a detailed business plan which must clearly demonstrates such a need before any such discount may be considered. Regardless of the circumstances, rental discounts should not exceed the rental amount, resulting in a credit to the tenant; and in any event, all tenants should pay minimum rent. Unless extremely exigent circumstances dictate, no tenant should be exempt from sharing in the operations and maintenance expenses of their allocated land.

(b) ADC may follow the provisions of H.R.S., Chapter 171 (DLNR) governing lease, license and permit terms in order to promote uniformity of land governance among various land owners. However, ADC may also negotiate unique and special terms to the extent allowed by law whenever special needs of the tenants are adequately reflected in their business plans.

(c) ADC does not allow lessees or licensees to profit from any sublease or sublicense. ADC may conduct financial audits to enforce this policy.

**ADC 001581**

## **TENANT SELECTION CRITERIA**

Potential tenants shall submit a properly filled-out application form and attach appropriate required supporting documents such as business plans and financial statements before being considered.

ADC may use the following criteria to select tenants (not listed in any order of priority):

- Type of operation
- Infrastructure required for operation
- Water use and availability
- Compatibility with existing tenant activities and business operations
- Suitability of proposed activities on designated site
- Farming and educational experience
- Financial solvency
- Market for product and feasibility of marketing product
- Legal status of farming operation
- Tax status
- Intent to obtain an approved conservation plan
- Length of time entity has been operating
- Length of time entity has been operating in Hawaii
- Current and potential legal liability to ADC and state
- Amount of exit cost
- Better Business Bureau standing
- Economical return to ADC and state
- Character and fitness of management
- Environmental impact

ADC may establish a subcommittee to review land application(s) before any final decisions are taken to the board for consideration.

**ADC 001582**

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## APPENDIX H: SUMMARY OF HART AUDIT CONCERNS

Act 1 appropriated \$1,000,000 in general funds to the Office of the Auditor to conduct:

- (1) Annual reviews of any rapid transportation authority in the State charged with the responsibility of constructing, operating, or maintaining a locally preferred alternative for a mass transit project that receives monies from a surcharge on state tax and/or transient accommodations tax revenues (this currently only applies to the HART);<sup>269</sup> and
- (2) An audit of HART in accordance with Act 1 and submit its findings 20 days prior to the convening of the regular session of 2019.<sup>270</sup>

The Office of the Auditor contracted with several individuals and accounting firms to work on the audit of the HART, including Judge Randal K.O. Lee (ret.), Daniel Hanagami, BKD, LLP, and Baker Tilly Virchow Krause, LLP. Testimony from Judge Lee revealed that after he started his review of HART documents and reported his findings to the Office of the Auditor, he was instructed by Auditor Kondo to “pause” the work. The Committee is concerned that part of Judge Lee's findings given to Auditor Kondo included evidence of mismanagement of public funds, but Judge Lee's findings were not included in the final HART Audit. Eventually, Judge Lee's contract was terminated by Auditor Kondo and the reason given was lack of available funding.

The Committee received testimony from Judge Lee regarding the conduct of the Office of the Auditor during the HART Audit. When questioned about the circumstances surrounding Judge Lee's contract termination, Judge Lee stated that Auditor Kondo told him and Mr. Hanagami to stop working because the Speaker of the House of Representatives, Scott K. Saiki, would not approve a release of funding to pay them.<sup>271</sup>

In an email addressed to Judge Lee and Mr. Hanagami, Auditor Kondo indicated that Speaker Saiki refused Auditor Kondo's request to use the Office of the Auditor's fiscal year 2018 surplus funds to pay for the work that needed to be completed before the end of that calendar year, which included both the HART audit and the review of the invoices that the Department of Accounting and General Services (DAGS) had certified as eligible for reimbursement from the Mass Transit Special Fund. Since the Auditor intended to contract for the invoice review using the fiscal year surplus funds, the only funds available for all work

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<sup>269</sup> It does not appear that the Auditor has been conducting annual reviews of HART in accordance with [section 23-14, HRS](#). See [Review of the Department of Accounting and General Services' Verification of HART's Invoices, Report No. 19-11 \(March 28, 2019\)](#).

<sup>270</sup> [Act 1, Special Session Laws of Hawaii 2017](#).

<sup>271</sup> [Testimony of Judge Randal K.O. Lee \(Ret.\) on October 28, 2021](#).

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related to HART were the funds appropriated under Act 1. However, according to Auditor Kondo, the entire amount had been encumbered for the contracts with Judge Lee, Mr. Hanagami, and BKD, LLP.

The Office of the Auditor's response to the Committee's Draft Report indicated that because Speaker Saiki refused to allow the Office of the Auditor to use surplus funds that were about to lapse for the HART audit, the Auditor had to use the funds that had been encumbered to pay for Judge Lee and Mr. Hanagami's services to retain another construction consultant (Baker Tilly Virchow Krause, LLP) to verify that the HART invoices approved for reimbursement by DAGS met the eligibility requirements for reimbursement under Act 1.<sup>272</sup>

The Committee finds Auditor Kondo's statements in his email to Judge Lee and Mr. Hanagami confusing. If the entire amount appropriated under Act 1 had already been encumbered for the contracts with Judge Lee, Mr. Hanagami, and BKD, LLP, why would Auditor Kondo need approval to use its surplus funds to pay Judge Lee, Mr. Hanagami, and BKD, LLP?

The Committee also finds the Office of the Auditor's actions risky. It appears that the Office of the Auditor entered contracts with Judge Lee, Mr. Hanagami, and BKD, LLP that would encumber the entire amount under Act 1 hoping that it would be able to secure approval to use surplus funds for other required contracts at a later time.

What also remains in question is \$102,827.12 of the \$1,000,000 originally appropriated for Act 1. DAGS states that no funds lapsed but does not indicate that the remaining \$102,827.12 was expended. The Office of the Auditor does not indicate how all of the unencumbered funds originally set aside for Judge Lee's contract were expended, just that the Auditor could not pay for Judge Lee's services because he had to use the funds that had been encumbered to pay for Judge Lee and Mr. Hanagami's services to retain another construction consultant. This unexpended but still encumbered \$102,827.12 from the Act 1 funds raise serious questions about the Office of the Auditor's management of contracts and public funds in general.

The Committee further finds the timing of and circumstances surrounding Judge Lee's termination concerning. Judge Lee testified that shortly after submitting documents to Auditor Kondo regarding questionable transactions with HART involving change orders, he and Mr. Hanagami were advised to stop looking at documents so that BKD, LLP could catch up.<sup>273</sup> Judge Lee and Mr. Hanagami questioned this instruction because BKD, LLP had an entire team of people that could catch up; however, Auditor Kondo instructed them not to

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<sup>272</sup> [Appendix D: Office of the Auditor Response to Draft Report, p. 43.](#)

<sup>273</sup> [Testimony of Judge Randal K.O. Lee \(Ret.\) on October 28, 2021.](#)

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look at documents. Judge Lee asked Auditor Kondo at least one other time if they could start looking at documents again and was told to wait.

After Judge Lee and Mr. Hanagami were instructed to stop looking at documents, they pivoted to questioning witnesses. Judge Lee testified that Auditor Kondo told him and Mr. Hanagami to stop working entirely after an interview with a HART official in which Judge Lee felt that Mr. Kondo was trying to "rehabilitate" the HART official, which made Judge Lee question which side Auditor Kondo was on.<sup>274</sup>

The Committee found Judge Lee's testimony about Auditor Kondo credible and troubling. Auditor Kondo's behavior in the interview and his handling of Judge Lee and Mr. Hanagami's concerns about HART's payment of change orders and potential bid rigging, which were never fully addressed in the report issued on the Audit of HART and may not have been reported to the proper authorities for investigation, raise questions about Auditor Kondo's independence, objectivity, judgment, and adherence to laws and *Government Auditing Standards*. It also suggests that the Auditor may not be complying with section 23-7, HRS, which requires the Auditor to report any unauthorized, illegal, irregular, improper, or unsafe handling or expenditure of state funds, or other improper practice of financial administration to the Legislature or any legislative interim committee then in existence, and the Governor and the council of the political subdivision concerned.<sup>275</sup>

The Committee recognizes that there is an ongoing dispute between the Office of the Auditor and BKD, LLP, related to its work for the HART audit. The Committee was unable to review BKD, LLP's work product or issue a subpoena to BKD, LLP to testify before the Committee or produce evidence because of BKD, LLP's reluctance to participate and cooperate with the Committee's investigative inquiries. However, the Committee is concerned about BKD, LLP's public statements regarding Auditor Kondo's independence and objectivity. In a news article, BKD, LLP denied Auditor Kondo's allegations about BKD, LLP's work product as a "smokescreen to undermine BKD's credibility" and stated that it was trying to be independent and objective and report the facts as they saw them, however "[i]t became clear during the process that that was not what Mr. Kondo was looking for."<sup>276</sup> The Committee finds these statements regarding Auditor Kondo's independence and objectivity concerning because they echo similar statements received by the Committee.<sup>277</sup>

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<sup>274</sup> [Testimony of Judge Randal K.O. Lee \(Ret.\) on October 28, 2021.](#)

<sup>275</sup> [HRS §23-7.](#)

<sup>276</sup> [Emails show turmoil in state Auditor's Office during rail audit \(hawaiinewsnow.com\).](#)

<sup>277</sup> [See Appendix I: Redacted Communication Regarding Auditor Leslie K. Kondo to Committee Member \(Dated November 12, 2021\).](#)



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The termination of BKD, LLP's HART audit contract and how this termination may have impacted BKD, LLP's other contracts with the Office of the Auditor also raise concerns about the management of contracts and public funds by the Office of the Auditor. According to the Office of the Auditor's response to the Committee's Draft Report, soon after terminating BKD, LLP's HART contract for default, Auditor Kondo exercised the right to terminate, for convenience, BKD, LLP's other contracts to perform the financial audits of the Department of Transportation Airports Division and Highways Division.<sup>278</sup> The Office of the Auditor stated:

The Auditor determined it would be irresponsible — and was not in the best interest of the state — to continue those contracts given BKD's threats and demands against the Office of the Auditor. BKD was paid, in full, for the work it had performed up to the date of termination for convenience.<sup>279</sup>

According to information provided by DAGS, the funds appropriated by Act 1 were awarded as follows for a total amount of \$1,020,000:

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<sup>278</sup> [Appendix D: Office of the Auditor Response to Draft Report, p. 43.](#)

<sup>279</sup> [Appendix D: Office of the Auditor Response to Draft Report, p. 43.](#)

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Table A. Summary of Contract Awards Using Act 1 Funds

AWARDEE	CONTRACT NO.	SCOPE OF SERVICES	CONTRACT AMOUNT	CONTRACT AWARD DATE	CONTRACT START DATE	INITIAL CONTRACT END DATE	ACTUAL CONTRACT TERMINATION DATE
<b>Randal K.O. Lee</b>	66640	Factual investigation and analysis of the financial records and other documents relating to HART	\$200,000	04/03/2018	05/01/2018	06/30/2019	10/24/2018
<b>BKD, LLP</b>	66708	Examination of the financial records and analysis of the financial management of HART	\$725,000	05/04/2018	05/04/2018	06/30/2019	Still Open
<b>Baker Tilly Virchow Krause, LLP</b>	67309	Identification of overcharges and construction contract compliance cost verification review services relating to the financial records and financial management of HART	\$95,000	10/19/2018	10/19/2018	06/30/2019	06/10/2019
<b>Daniel Hanagami</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A

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These contracted amounts were then expended by the Office of the Auditor as follows, with \$166,100 of the original \$200,000 encumbered for Judge Lee's contract unencumbered on October 24, 2018:

Table B. Expenditures of Act 1 Funds

DATE	DESCRIPTION	AMOUNT EXPENDED	CASHFLOW
09/05/2017	Act 1 enacted		1,000,000.00
05/14/2018	Randal K.O. Lee Payment	(6,375.00)	993,625.00
06/08/2018	Randal K.O. Lee Payment	(15,150.00)	978,475.00
07/16/2018	Randal K.O. Lee Payment	(12,375.00)	966,100.00
08/15/2018	Journal Voucher (Chargeback from the Attorney General's Office for Daniel Hanagami)	(43,272.88)	922,827.12
10/08/2018	BKD, LLP Payment	(231,646.85)	691,180.27
10/08/2018	BKD, LLP Payment	(209,108.69)	482,071.58
01/23/2019	Baker Tilly Virchow Krause, LLP	(66,805.25)	415,266.33
04/09/2019	Baker Tilly Virchow Krause, LLP	(18,694.75)	396,571.58
06/10/2019	Baker Tilly Virchow Krause, LLP	(9,500.00)	387,071.58
	Contracts Balance (Open claims)	(284,244.46)	102,827.12

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remaining on BKD Contract)		
Remaining unaccounted for funds	(102,827.12)	0.00

The expenditures made to Judge Lee, BKD, LLP, and Baker Tilly Virchow Krause, LLP were made pursuant to contracts awarded by the Office of the Auditor for services related to its audit of HART (see Table A). The journal voucher expenditure of \$43,272.88 was made to the Department of the Attorney General for services provided by Daniel Hanagami pursuant to a Memorandum of Agreement dated April 3, 2018, for professional services related to the HART audit as required by Act 1.

## Discussion of Contract Expenditures and Termination of Contractors Related to Act 1

Judge Randal K.O. Lee (Ret.)

In April 2018, the Office of the Auditor hired Judge Lee to provide professional services for the audit of HART.<sup>280</sup> On April 12, 2018, and April 13, 2018, \$200,000 of the appropriated \$1,000,000 rail funds were encumbered and certified for Judge Lee's contracted work. In June/July 2018, after approximately two months of work, Judge Lee's contract was terminated and Mr. Hanagami also stopped his work with the Office of the Auditor. On October 24, 2018, paperwork was submitted to reduce the \$200,000 contact encumbrance by \$166,100, leaving a balance of \$33,900, which was previously paid to Judge Lee in three payments as indicated below. According to forms submitted and documentation provided by Judge Lee, the contract with Judge Lee was terminated for convenience of the State.<sup>281</sup>

Payments were made to Judge Lee as follows:

DATE	AMOUNT
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<sup>280</sup> RFQ No. 2017-03, *Request for Statement of Qualifications to Provide Professional Services for the Audit of the Honolulu Authority for Rapid Transportation, Hawaii Awards & Notice Data System.*

<sup>281</sup> On July 17, 2018, Auditor Kondo sent Judge Lee a formal written notice of intent to terminate his contract in whole for the convenience of the State, effective immediately.

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<b>05/14/2018</b>	\$6,375.00
<b>06/04/2018</b>	15,150.00
<b>07/16/2018</b>	12,375.00
<b>TOTAL</b>	\$33,900.00

BKD, LLP

The contract encumbrance for BKD, LLP was encumbered on May 8, 2018, for \$700,000. On August 2, 2018, a supplement to the contract was processed for an additional contract encumbrance of \$25,000 for a total encumbrance of \$725,000. BKD, LLP was paid a total of \$440,755.54, leaving a contract encumbrance balance of \$284,244.46, which did not lapse on June 30, 2019,<sup>282</sup> and can be held indefinitely until the actual contract is closed. According to DAGS, the contract with BKD, LLP remains "open." The Office of the Auditor stated in its response to the Committee's Draft Report that it terminated BKD, LLP's contract for default and withheld the remaining \$284,244.46 under the contract due to significant issues with BKD, LLP's work discovered in November 2018.<sup>283</sup>

Payments were made to BKD, LLP as follows:

DATE	AMOUNT
<b>10/08/2018</b>	\$231,646.85
<b>10/08/2018</b>	209,108.69
<b>TOTAL</b>	\$440,755.54

Baker Tilly Virchow Krause, LLP

The Committee notes that the contract with Baker Tilly Virchow Krause, LLP was entered into on October 19, 2018, three months after the Office of the Auditor ended its contracts with

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<sup>282</sup> See [Act 1](#) (requiring unencumbered amounts to lapse on June 30, 2019).

<sup>283</sup> [Appendix D: Office of the Auditor Response to Draft Report, p. 42.](#)

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Judge Lee and Mr. Hanagami. On November 1, 2018, \$95,000 was encumbered for the contracted with Baker Tilly Virchow Krause, LLP.

Payments were made to Baker Tilly Virchow Krause, LLP as follows, with completion of its Contract and Vendor Compliance Report of HART on May 3, 2019:

DATE	AMOUNT
<b>01/23/2019</b>	\$66,805.25
<b>04/09/2019</b>	18,694.75
<b>06/10/2019</b>	9,500.00
<b>TOTAL</b>	\$95,000.00

Accordingly, Baker Tilly Virchow Krause, LLP was paid the full contract amount of \$95,000 for its work.<sup>284</sup>

## Office of the Auditor and BKD, LLP Contracts

On June 23, 2017, BKD, LLP was awarded a \$1,291,000 three-year contract by the Office of the Auditor to perform the financial statement and single audits of the Department of Transportation, Airports Division, for the fiscal years ending June 30, 2017, 2018, and 2019.<sup>285</sup> BKD, LLP was scheduled to receive the contract award in the following three sums: \$417,000 for FY2017, \$434,000 for FY2018, and \$440,000 for FY2019. Although BKD, LLP completed the financial and single audits for FY2017 and FY2018,<sup>286</sup> it appears that the audit for FY2019 was completed by a different firm, KPMG, LLP.<sup>287</sup> KPMG, LLP was awarded a contract valued at

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<sup>284</sup> [Contract and Vendor Compliance Report of HART \(May 3, 2019\).](#)

<sup>285</sup> [Contract No. 65854, Contract Award for the Department of Transportation - Airports Division Financial Statement and Single Audits for FY2017, FY2018, and FY2019, Hawaii Awards & Notice System.](#)

<sup>286</sup> [Financial and Compliance Audit of the Department of Transportation, Airports Division, for the Fiscal Year Ended June 30, 2017 \(03/20/2018\); Financial and Compliance Audit of the Department of Transportation, Airports Division, for the Fiscal Year Ended June 30, 2018 \(02/07/2019\).](#)

<sup>287</sup> [Financial and Compliance Audit of the Department of Transportation, Airports Division, for the Fiscal Year Ended June 30, 2019 \(04/03/2020\).](#)

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\$472,000 for its work on the audit—\$32,000 more than the original contract awarded to BKD, LLP.<sup>288</sup>

A couple weeks after BKD, LLP was awarded the HART contract, it was awarded a \$997,000 three-year contract by the Office of the Auditor to conduct the financial and compliance audits of the Department of Transportation, Highways Division, for the fiscal years ending June 30, 2018, 2019, and 2020.<sup>289</sup> BKD, LLP was scheduled to receive the contract award in the following three sums: \$325,000 for FY2018, \$334,000 for FY2019, and \$338,000 for FY2020. BKD, LLP only completed the financial and compliance audit for FY2018.<sup>290</sup> The remaining two contracts for FY2019 and FY2020 were completed by KKDLY, LLC.<sup>291</sup> Although the contract award indicated that the awardee would be paid \$336,000 for each fiscal year (the sum of which equals the amount BKD, LLP would have been paid for the FY2019 and FY2020 audits),<sup>292</sup> the total contract value for KKDLY, LLC was actually \$722,100—\$50,100 more than expected.

Table C. Encumbrance, Closure, and/or Termination Dates for Contracts under BKD, LLP from June 2017-present

CONTRACT #	ENCUMBRANCE DATE	CLOSURE DATE	TERMINATION DATE	AMOUNT	MEANS OF FINANCING
<b>66708</b>	05/08/2018	Still Open	Still Open	\$700,000	General Funds
	08/02/2018			\$25,000	
<b>65854</b>	07/12/2017	04/11/2018	04/11/2018	\$417,000	Revolving Funds
	05/23/2018	01/23/2019	01/23/2019	\$434,000	

<sup>288</sup> [RFQ No. 2019-01, Contract No. 67935](#).

<sup>289</sup> [RFQ No. 2018-01, Contract Number 66869](#).

<sup>290</sup> [Financial and Compliance Audit of the Department of Transportation, Highways Division, for the Fiscal Year Ended June 30, 2018 \(03/20/2019\)](#) (the Committee could not find a copy of the Audit under the [Reports to the Legislature](#) link on the Capitol Website).

<sup>291</sup> [Financial and Compliance Audit of the Department of Transportation, Highways Division, for the Fiscal Year Ended June 30, 2019 \(07/13/2020\)](#); [Financial and Compliance Audit of the Department of Transportation, Highways Division, for the Fiscal Year Ended June 30, 2020 \(04/13/21\)](#).

<sup>292</sup> [RFQ No. 2019-01, Contract No. 67931](#).

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<b>66869</b>	06/14/2018	Still Open	Still Open	\$325,000	Revolving Funds
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## APPENDIX I: REDACTED COMMUNICATION REGARDING AUDITOR LESLIE K. KONDO TO COMMITTEE MEMBER (DATED NOVEMBER 12, 2021)

### Rep. Della Belatti

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**From:** Rep. [REDACTED]  
**Sent:** Friday, November 12, 2021 2:10 PM  
**To:** Rep. Della Belatti  
**Subject:** FW: Audit investigation - Les Kondo

FYI below – how should I handle?

[REDACTED]

Sent from [Mail](#) for Windows

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**From:** [REDACTED]  
**Sent:** Friday, November 12, 2021 10:38 AM  
**To:** Rep. [REDACTED]  
**Subject:** Audit investigation - Les Kondo

Hello Representative [REDACTED],

I was pleased to learn you are performing an investigation into Les Kondo's office. This is long overdue.

The accounting firm I was previously with was hired by Les' office several years ago for an important audit. During our work, we learned a lot about Les and his team and their lack of professionalism.

For starters, his office is far from "independent" and most certainly not "free from bias". He used various scare tactics with our team. He didn't agree with our report and threatened to fire us when our findings didn't agree with his "agenda". On each occasion we presented Les with our observations he would find ways to change our report to further his narrative. In fact, he ended up writing our report and left us with no choice.

Secondly, his reports are very opinionated. Someone independent should not be as strong with their opinions. His reports are stories and far from factual. He has journalists on his staff that turn audit reports into stories. Les likes drama and enjoys confrontation with the public, so he happily embraces less than factual audit reports.

Lastly, he is not qualified whatsoever to be auditor. He would often joke about there being little to no requirements to be state auditor. He would laugh at requirements and heavily relied on his audit team to know the requirements. His legal background helps, but he approaches everything as if it's an interrogation.

I would encourage you to look into the ethics of his practices, outside firms they hire and perform an independent investigation into those practices.

I personally observed Les fire numerous consultants who didn't agree with his agenda/approach. Then Les tells the media the consultant's work was of poor quality, etc. The work was of high standard, it just didn't jive with his agenda.

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Thank you for reading. Hopefully this prompts a deeper dive into his less than ethical practices. It's ironic he was involved in the ethics committee prior to becoming the state auditor. Les believes he is above the law and the subpoena power he has gets to his head; he threatens auditees all the time with his ability to subpoena.

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## APPENDIX J: UNREDACTED EMAIL FROM KEITH CHUN TO DLNR PERSONNEL OFFICER (DATED JUNE 22, 2016)

**Schutte, Alice H**

**From:** Chun, Keith K  
**Sent:** Wednesday, June 22, 2016 2:12 PM  
**To:** Schutte, Alice H  
**Subject:** Proposed settlement of Internal Complaint against Russell Tsuji

Alice,

Per our conversation, below in italics is my email to Amrika Mallik, which she indicated should be handled by the Personnel Office. As I indicated to Ms. Mallik, Russell has requested that I cease emailing him, so to respect his wishes, I did not present my settlement proposal directly to him. Also, per our conversation, there are additional options available to me in the event a settlement is not reached, which I would explain at the settlement meeting.

Finally, since it is already 2pm, I am willing to extend my offer until Thursday, June 23, 2016 at 4pm.

Keith

*Dear Ms. Mallik,*

*Good morning, I hope all is well with you.*

*Recently, there have been several developments which I have carefully considered and weighed. In light of these developments, I would like to propose an offer to Russell Y. Tsuji ("RYT") to meet and try to reach a settlement of my complaint against him. I believe we could reach a settlement that would mutually benefit both parties.*

*I also believe these recent developments may be of interest to RYT and may influence his decision on how he chooses to further proceed in this matter.*

*These developments include:*

- A written complaint against RYT, Kevin Moore, and Ian Hirokawa by at least seven (7) Land Division staff members which is expected to be filed this week with DLNR's Personnel Office;*
- My multiple consultations with an attorney with the law office of Eric A Seitz;*
- An unsolicited job offer from the State Auditor;*
- An unsolicited invitation to join a golf foursome that would include Senator Donovan Dela Cruz;*
- My multiple conversations with Senator Ron Kouchi's office;*
- The upcoming public hearing on Land Division's revocable permits ("RPs") and its proposed appraisal of the RPs; and*
- The resignation of DLNR's DOCARE Chief and the media coverage it received.*

*RYT has requested that I cease emailing him. As such, would you be willing to contact him with my proposal to meet and discuss a possible settlement? You may also share the recent developments I listed above, which I can go into further detail with him at the meeting (and also discuss some additional issues that that I cannot disclose at this time). If contacting RYT is not something within your scope of work as the investigator, or if you have other reasons that you cannot discuss this with him, please let me know. I fully understand.*

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*Due to time constraints and paperwork that I must complete and submit before my last day of employment next week on June 30, 2016 (e.g., unemployment insurance, retirement, COBRA/medical/dental, etc.), my offer to meet and discuss a possible settlement with RYT expires on June 22, 2016 at 4 p.m.*

*Thank you for your time and effort on this matter.*

*Sincerely,*

*Keith Chun*